

Exhibit 75:

James Kissinger Deposition Transcript



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Transcript of the Testimony of
JAMES KISSINGER

Date: January 26, 2023

Volume:

Case: John Does, Mary Doe, & Mary Roe v. Whitmer & Gasper

Printed On: February 10, 2023

JAMES KISSINGER

1/26/2023

<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHER DIVISION</p> <p>JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all other similarly situated,</p> <p>Plaintiffs, vs. File No. 2:22-cv-10209 Hon. Mark A. Goldsmith Mag. Curtis Ivy, Jr.</p> <p>GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their official capacities,</p> <p>Defendants.</p> <p>The Remote Deposition of JAMES KISSINGER Lowell, Michigan Commencing at 11:04 a.m. Thursday, January 26, 2023 Before Gina Deskiewicz, CSR-9689, RPR.</p> <p>Page 1</p>	<p>1 APPEARANCES 2 3 AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN MIRIAM J. AUKERMAN (P63165) 4 1514 Wealthy SE, Suite 260 Grand Rapids, Michigan 49506 5 (616) 301-0930 maukerman@aclumich.org 6 Appearing via Zoom. 7 8 AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN UNIV. OF MICHIGAN LAW SCHOOL 9 PAUL D. REINGOLD (P27594) 802 Legal Research Building 10 801 Monroe Street Ann Arbor, Michigan 48109 11 (734) 355-0319 pdr@umich.edu 12 Appearing via Zoom. 13 14 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL KRISTIN M. HEYSE (P64353) 15 SARAH E. TRUDGEON (P82155) 525 W. Ottawa Street, PO box 30217 16 Lansing, Michigan 48933 (517) 335-3055 17 heysek@michigan.gov Appearing via Zoom. 18 19 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL 20 SCOTT L. DAMICH (P74126) PO Box 30754 21 Lansing, Michigan 48909 (517) 335-7573 22 damichs@michigan.gov Appearing via Zoom. 23 24 25</p> <p>Page 2</p>
<p>1 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL KEITH G. CLARK (P56050) 2 PO Box 30217 Lansing, Michigan 48909 3 (517) 335-3055 ClarkK33@michigan.gov 4 Appearing via Zoom. 5 6 ACLU OF MICHIGAN DAYJA S. TILLMAN (P86526) 7 1514 Wealthy Street SE, Suite 260 Grand Rapids, Michigan 49506 8 (616) 301-0930 dstillman@ucdavis.edu 9 Appearing via Zoom. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 3</p>	<p>1 INDEX 2 3 WITNESS: 4 JAMES KISSINGER 5 EXAMINATIONS PAGE 6 EXAMINATION BY MR. REINGOLD 5 7 EXAMINATION BY MR. CLARK 79 8 RE-EXAMINATION BY MR. REINGOLD 82 9 10 11 EXHIBITS 12 (Attached to transcript.) 13 EXHIBIT NO. PAGE 14 EXHIBIT #1 28 15 -OP operating procedure 05.01.100 16 17 18 19 20 21 22 23 24 25</p> <p>Page 4</p>

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<p>1 Lowell, Michigan</p> <p>2 January 26, 2023</p> <p>3 *****</p> <p>4 THE REPORTER: We are going on the</p> <p>5 record. It is 11:04 a.m. My name is</p> <p>6 Gina Deskiewicz. I am a Notary Public for the</p> <p>7 county of Macomb. I am a certified shorthand</p> <p>8 reporter for the state of Michigan.</p> <p>9 This deposition is being held via</p> <p>10 videoconferencing equipment. The witness and the</p> <p>11 reporter are not in the same room. The witness</p> <p>12 will be sworn in remotely, pursuant to agreement of</p> <p>13 all parties. The parties stipulate that the</p> <p>14 testimony is being given as if the witness was</p> <p>15 sworn in person.</p> <p>16 *****</p> <p>17 JAMES KISSINGER,</p> <p>18 was thereupon called as a witness herein, and after</p> <p>19 having first been duly sworn to testify to the truth,</p> <p>20 the whole truth and nothing but the truth, was examined</p> <p>21 and testified as follows:</p> <p>22 EXAMINATION</p> <p>23 BY MR. REINGOLD:</p> <p>24 Q. All right. This is a -- My name is Paul Reingold,</p> <p>25 I should say to start. I'm one of the plaintiff's</p> <p style="text-align: center;">Page 5</p>	<p>1 counsel in this case. The case is called Doe's</p> <p>2 versus Whitmer, and the underlying litigation is a</p> <p>3 challenge to Michigan Sex Offender Registration</p> <p>4 Act.</p> <p>5 This is a rule 30(b)(6) deposition</p> <p>6 pursuant to subpoena and a deposition notice. It's</p> <p>7 been adjourned from a week ago, and today is</p> <p>8 Thursday, January 26th, 2023, and it's a little</p> <p>9 after 11:00. The witness has been sworn.</p> <p>10 Let me ask, do you prefer to go by</p> <p>11 James, Jim, or Mr. Kissinger?</p> <p>12 A. James is preferable.</p> <p>13 Q. Okay. That's great. And I go by Paul, and that's</p> <p>14 fine, too. All right.</p> <p>15 You've been designated by the MDOC</p> <p>16 Counsel as one of the two authoritative people on</p> <p>17 the issues that we're going to be deposing today.</p> <p>18 What that means is that you know a lot, and I know</p> <p>19 almost nothing. And so the -- at least my rule</p> <p>20 today is that we transfer the knowledge that's in</p> <p>21 your head into mine, so that I get brought up to</p> <p>22 speed on how these processes work.</p> <p>23 Let me start by asking you, have you</p> <p>24 ever been deposed before?</p> <p>25 A. I have not.</p> <p style="text-align: center;">Page 6</p>
<p>1 Q. That's good. I always tell me clients it can be an</p> <p>2 interesting and fun experience.</p> <p>3 Have you ever been a witness in a court</p> <p>4 case before?</p> <p>5 A. I have not.</p> <p>6 Q. Okay. I'll explain just a little bit about the</p> <p>7 process today. Basically I'm asking you, you know,</p> <p>8 a series of questions, and you're providing</p> <p>9 answers, as I said, to transfer information. If</p> <p>10 you don't understand a question, please feel free</p> <p>11 to stop me, and ask me to rephrase it. If you</p> <p>12 answer a question, we'll assume that you understood</p> <p>13 it. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Perfect. And then for any question, you have to</p> <p>16 answer out loud; it's something we're not used to</p> <p>17 doing in other settings. But if you don't answer</p> <p>18 out loud, the record won't be clear, and the court</p> <p>19 reporter can't take down a shake of the head, so</p> <p>20 try to remember to do that.</p> <p>21 The other issue is the court reporter</p> <p>22 can't make a clean record if two people are talking</p> <p>23 at once, and so we should try to not talk over each</p> <p>24 other if we can avoid it.</p> <p>25 A. Understood.</p> <p style="text-align: center;">Page 7</p>	<p>1 Q. Okay. And if you need a break at any time, let me</p> <p>2 know. The only thing I ask is if there's a</p> <p>3 question that's pending, that you answer it</p> <p>4 beforehand. Okay?</p> <p>5 A. Okay.</p> <p>6 Q. Let me start by asking, did you do anything to</p> <p>7 prepare for this deposition?</p> <p>8 A. We did meet with the AG's representatives to</p> <p>9 discuss Kristin being the -- the lead on that, I</p> <p>10 believe.</p> <p>11 Q. Okay. And did you review any documents?</p> <p>12 A. I did review documents.</p> <p>13 Q. And what sort of documents did you review?</p> <p>14 A. OP 05.01.100, PD 05.01.100, MSAPP protocol,</p> <p>15 Static-99R scoring manual, Stable-2007 scoring</p> <p>16 manual. That is the exhaustive list that I can</p> <p>17 think of at this time.</p> <p>18 Q. All right. It sounds like you're up to speed.</p> <p>19 Did you review any legal materials,</p> <p>20 anything about the case or anything?</p> <p>21 A. I did not -- well, pardon me. I did review the</p> <p>22 30(b)(6) deposition to us, the questions.</p> <p>23 Q. Okay. Great. Great. And then were you involved</p> <p>24 at all in responding to the subpoena that we had</p> <p>25 served and the materials that we requested?</p> <p style="text-align: center;">Page 8</p>

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<p>1 A. I am not aware. I don't know that answer.</p> <p>2 Q. Okay. No one came to you and said will you help us</p> <p>3 out with this document request? It would have been</p> <p>4 a couple weeks ago.</p> <p>5 A. We did receive a question about what documents were</p> <p>6 needed for this litigation, and I did respond to</p> <p>7 that request. I do believe that was with Kristin.</p> <p>8 Q. Okay. So you were the source for supplying some of</p> <p>9 the documents?</p> <p>10 A. Correct.</p> <p>11 Q. Or at least you suggested some?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Great. All right.</p> <p>14 What I want to do is start sort of by</p> <p>15 getting to know you, and that is your biography.</p> <p>16 And so you just walk us through your educational</p> <p>17 history from high school through whatever you</p> <p>18 finished, and what that means is schools, places if</p> <p>19 it's not obvious, dates, your major maybe, and any</p> <p>20 degrees that you have.</p> <p>21 A. Very good. In 1996 I graduated from</p> <p>22 Hope Christian School in Albuquerque, New Mexico,</p> <p>23 that was high school. 2000 I graduated from</p> <p>24 Calvin College in Grand Rapids, Michigan, with a</p> <p>25 Bachelor's degree in Criminal Justice. In 2006 I</p> <p style="text-align: center;">Page 9</p>	<p>1 graduated from Western Michigan University with a</p> <p>2 Master's Degree in Counseling Psychology. And did</p> <p>3 you also want my vocational history? I apologize</p> <p>4 if you already asked that.</p> <p>5 Q. Let's get to work history next. Were there any</p> <p>6 brakes along the way; did you do military service</p> <p>7 or anything like that?</p> <p>8 A. No military service.</p> <p>9 Q. Okay. And then when you finished school, can you</p> <p>10 walk us through your work history up to the point</p> <p>11 where you joined the Department of Corrections?</p> <p>12 Stop me at that point.</p> <p>13 A. Sorry, when you mean "finished school" are you</p> <p>14 referencing graduate school?</p> <p>15 Q. If there was a significant job between college and</p> <p>16 graduate school or something like that, you can</p> <p>17 include that. If, you know, you were a lifeguard</p> <p>18 somewhere and it doesn't have any bearing on what</p> <p>19 you're doing, I don't need to know.</p> <p>20 A. Well, my undergraduate -- graduation From Calvin I</p> <p>21 began work in substance use disorder assessment and</p> <p>22 treatment at Pathfinder Resources In Grand Rapids,</p> <p>23 Michigan; I served as a resident assistant and then</p> <p>24 case manager. That period was from 2000 to</p> <p>25 approximately 2003.</p> <p style="text-align: center;">Page 10</p>
<p>1 I then worked for Goodwill Industries</p> <p>2 of Greater Grand Rapids as a vocational services</p> <p>3 coordinator before becoming Northern Vocational</p> <p>4 Services Manager; I worked there until</p> <p>5 approximately 2006.</p> <p>6 In 2006 I was hired by Community Mental</p> <p>7 Health of Ionia County. I worked in the ACT,</p> <p>8 assertive community treatment team, from 2006 until</p> <p>9 2008 as a -- I don't know what my actual job title</p> <p>10 was. I believe it was case manager.</p> <p>11 And then 2008 -- April of 2008 I hired</p> <p>12 with Michigan Department of Corrections as a</p> <p>13 psychologist at the Michigan Reformatory.</p> <p>14 Q. All right. So some of that work was while you were</p> <p>15 in graduate school; is that right?</p> <p>16 A. Correct. I worked full time and went to graduate</p> <p>17 school at night.</p> <p>18 Q. That's what it sounded like. Good for you. All</p> <p>19 right.</p> <p>20 So when you arrived at the MDOC it was</p> <p>21 as a psychologist. And now can you walk us through</p> <p>22 the posts that you've had at the MDOC describing</p> <p>23 your work history again, positions, titles, places,</p> <p>24 rough dates, and core responsibilities or duties,</p> <p>25 and again, you don't need to be in graphic detail,</p> <p style="text-align: center;">Page 11</p>	<p>1 but enough to bring us up to speed.</p> <p>2 A. In 2008 I began as a psychologist at the</p> <p>3 Michigan Reformatory in Ionia, Michigan. I was</p> <p>4 part of the Psychology Services Unit, PSU. My</p> <p>5 responsibilities included running sex offender</p> <p>6 programming, SOP, and responding to mental-health</p> <p>7 related emergent issues, suicide evaluations,</p> <p>8 referrals for higher levels of mental health care.</p> <p>9 I was involved in that at the Reformatory as a</p> <p>10 psychologist under PSU until 2011, I then</p> <p>11 moved -- sorry, I need to back up.</p> <p>12 In 2011 I became Active Unit Chief of</p> <p>13 the Reformatory, I did that for one year, and then</p> <p>14 2012 I transferred to Bellevue Creek Correctional</p> <p>15 Facility as --</p> <p>16 Q. Let me just interrupt you on the last one.</p> <p>17 What does it mean to be Acting Unit</p> <p>18 Chief?</p> <p>19 A. It means that I was put in the -- It's hard for me</p> <p>20 to describe exactly what the "acting" means per</p> <p>21 civil service standards. I was placed into that</p> <p>22 role without having interviewed for the role and</p> <p>23 not -- it says maximum timeframe 12 months to be in</p> <p>24 a role for civil service guidelines. So --</p> <p>25 Q. And when you say "unit chief," is that for the</p> <p style="text-align: center;">Page 12</p>

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<p>1 psychological services?</p> <p>2 A. Correct, for psychological services at the</p> <p>3 Michigan Reformatory. I was a supervisor of</p> <p>4 approximately six other mental health staff.</p> <p>5 Q. Okay. You can pick up from there.</p> <p>6 A. 2012 I transferred to Battle Creek Correctional</p> <p>7 Facility to become part of the newly developed</p> <p>8 Michigan Sex Offender Program; MSOP is what it was</p> <p>9 formerly titled during that time. I worked at</p> <p>10 Bellevue Creek Correctional Facility in the MSOP</p> <p>11 program as a therapist, evaluator, and trainer,</p> <p>12 until I -- I was hired as State Administrative</p> <p>13 Manager for Sexual Abuse Prevention Services in</p> <p>14 June of 2017, and that is the role I currently</p> <p>15 serve in.</p> <p>16 Q. All right. So you've been doing that for six years</p> <p>17 or so now?</p> <p>18 A. Correct.</p> <p>19 Q. And in that role do you still do hands-on work</p> <p>20 either with prisoners or doing assessments, or are</p> <p>21 you now mostly an administrator and a policy</p> <p>22 person?</p> <p>23 A. Primarily administrator, policy, protocol,</p> <p>24 operating procedure-level work, however, I'm</p> <p>25 heavily involved in reviewing cases to ensure valid</p> <p style="text-align: center;">Page 13</p>	<p>1 and reliable assessments, as well as going to</p> <p>2 facilities and gauging group therapy with staff to</p> <p>3 ensure the quality of our program.</p> <p>4 Q. All right. Let's -- That's exactly what I wanted</p> <p>5 to know. So that's very, very helpful to me.</p> <p>6 What approximate percentage of your</p> <p>7 time do you spend working with people or with</p> <p>8 employees who are focusing on people who committed</p> <p>9 sexual offenses; is it almost all your time?</p> <p>10 A. Approximately 70 percent of my time is focused on</p> <p>11 working with individuals providing direct care.</p> <p>12 Q. All right. All right. In this deposition I'm</p> <p>13 going to use the word "registrants" to refer to the</p> <p>14 part of the population that we're focusing on</p> <p>15 today, people with sex convictions. And that's</p> <p>16 because in this litigation, all 50,000 Michigan</p> <p>17 registrants are our clients; they're all part of</p> <p>18 this last action.</p> <p>19 For purposes of this dep, when I use</p> <p>20 the word "registrants" I'm really referring</p> <p>21 primarily to incarcerated registrants because</p> <p>22 that's whom we're going to be discussing, as</p> <p>23 opposed to other people who are registrants but are</p> <p>24 living on the outside, not in prison.</p> <p>25 I can also tell you over the years that</p> <p style="text-align: center;">Page 14</p>
<p>1 I've sued the MDOC many times, which we have not</p> <p>2 done here, so I've learned a little bit about how</p> <p>3 the department operates, and over the years I've</p> <p>4 made some pretty good friends with MDOC folks along</p> <p>5 the way, I've had some directors and parole board</p> <p>6 shares who wound up, after retirement, serving as</p> <p>7 either expert witnesses or doing declarations on</p> <p>8 behalf of the plaintiffs in some of the cases.</p> <p>9 All right. Let's move along to sort of</p> <p>10 organization and staffing. Can you describe</p> <p>11 the -- the structure as it were of -- of the work</p> <p>12 that you're doing; is it viewed as part of health</p> <p>13 care services, is it viewed as -- What is it viewed</p> <p>14 as; how does it fit into the structure of the</p> <p>15 department?</p> <p>16 A. Sexual Abuse Prevention Services, that is the unit</p> <p>17 that I manage, it's under behavioral health care</p> <p>18 services in the department, and then under</p> <p>19 behavioral health care services, under mental</p> <p>20 health services.</p> <p>21 Q. All right. So it's -- it's viewed as fitting in</p> <p>22 the -- on the medical side, basically?</p> <p>23 A. Correct.</p> <p>24 Q. Yeah. Okay. And how big is the unit, total number</p> <p>25 of employees?</p> <p style="text-align: center;">Page 15</p>	<p>1 A. We have 27 dedicated FTE's, full time</p> <p>2 equivalencies, for prison-based staff. Within</p> <p>3 SAP's administration I currently have 4 dedicated</p> <p>4 FTE's.</p> <p>5 Q. All right. And are those the people who are doing</p> <p>6 the assessments and -- are running the programming,</p> <p>7 or is that delegated further down?</p> <p>8 A. Those -- The 27 FTE's dedicated for correctional</p> <p>9 facilities and administration are the ones running</p> <p>10 the therapy programs. Administrative staff that I</p> <p>11 have, including Corey Spickler, are responsible for</p> <p>12 both community operations as well as management of</p> <p>13 data related to our MSAPP groups for CFA staff.</p> <p>14 Q. What is CFA?</p> <p>15 A. Correctional Facilities Administration.</p> <p>16 Q. Okay. One of the hardest things going through the</p> <p>17 augmenting procedures is the number of acronyms.</p> <p>18 Right?</p> <p>19 A. Absolutely.</p> <p>20 Q. And it sounds like as far as the chain of command</p> <p>21 is concerned, you're at the top of this unit.</p> <p>22 So who are you supervised by, and what</p> <p>23 is the chain of command going up?</p> <p>24 A. I'm supervised by Mental Health Director</p> <p>25 David Dawdy, and Mental Health Director Dawdy</p> <p style="text-align: center;">Page 16</p>

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<p>1 reports to Health Services Administrator</p> <p>2 Marti K. Sherry.</p> <p>3 Q. Okay.</p> <p>4 A. I would like to clarify part of my response related</p> <p>5 to the assessments.</p> <p>6 Q. Yes.</p> <p>7 A. The 27 FTE's are responsible for the operations of</p> <p>8 group therapy programs. The evaluations, the</p> <p>9 sexual offense risk evaluations, are completed by</p> <p>10 mental health staff across the state.</p> <p>11 Q. And when you say "mental health staff across the</p> <p>12 state," is that MDOC employees, or is that largely</p> <p>13 contracted out?</p> <p>14 A. It's largely MDOC employees. We do have contracted</p> <p>15 staff that work for the MDOC inside our</p> <p>16 correctional facilities that complete some of those</p> <p>17 evaluations.</p> <p>18 Q. All right. And what are the numbers for those</p> <p>19 people, both groups, both the ones that are</p> <p>20 employees and the contract people that might be?</p> <p>21 A. We currently have approximately 150 mental health</p> <p>22 staff across the state who have been trained in the</p> <p>23 Static-99R, which would make them eligible to make</p> <p>24 them engage in the assessment process.</p> <p>25 Q. All right. So that means you've got a lot of</p> <p style="text-align: center;">Page 17</p>	<p>1 people out there doing assessments?</p> <p>2 A. Correct. Well --</p> <p>3 Q. Okay. I'm sure it's not -- It's never enough.</p> <p>4 Right?</p> <p>5 A. Right.</p> <p>6 Q. Okay. All right. What I'm trying to do is get</p> <p>7 a -- get a sense of how registrants, people who</p> <p>8 have committed sexual offenses, are processed and</p> <p>9 treated the same as other prisoners, and how much</p> <p>10 they're treated differently as to they're tracked</p> <p>11 into assessment and programming.</p> <p>12 So I want to start at the beginning</p> <p>13 with intake, the process when they arrive at an</p> <p>14 MDOC facility after having been convicted of a</p> <p>15 sexual crime. I've got some preliminary questions</p> <p>16 about that first, just because I haven't been</p> <p>17 involved in prison litigation for a while, and so</p> <p>18 I'm not current on how intake is being done.</p> <p>19 So at present, in 2023, are all</p> <p>20 prisoners coming into the -- into MDOC facilities</p> <p>21 steered to certain intake centers, or can intake</p> <p>22 occur anywhere?</p> <p>23 MS. HEYSE: So I'm going to actually</p> <p>24 object. I'll give you a little bit of leeway, but</p> <p>25 I'm going to keep you in your topics, and don't go</p> <p style="text-align: center;">Page 18</p>
<p>1 into any discussion about general intake processes</p> <p>2 or any of those types of procedures.</p> <p>3 So I'll let James answer this question,</p> <p>4 but I don't want to dive too far into topics</p> <p>5 outside of what you designated here, because that's</p> <p>6 the purpose of the notice related to us. Okay?</p> <p>7 MR. REINGOLD: All right. Yeah. Part</p> <p>8 of what I'm trying to do is get context so we all</p> <p>9 know, you know, where things occur. And I'm not</p> <p>10 going to ask substantive questions about, you know,</p> <p>11 how it's done or that sort of thing.</p> <p>12 MS. HEYSE: Okay.</p> <p>13 A. I can not speak authoritatively to where all the</p> <p>14 intakes occur at.</p> <p>15 BY MR. REINGOLD:</p> <p>16 Q. All right. I guess what I want to know is, where</p> <p>17 are registrants -- where is their intake done, is</p> <p>18 that centralized or is that -- also can it be any</p> <p>19 of the places where intakes are done?</p> <p>20 A. Again, I can't speak authoritatively to where all</p> <p>21 intakes are done in Department of Corrections. I'm</p> <p>22 not aware if intakes are done locally or</p> <p>23 100 percent. I can say the majority are completed</p> <p>24 at RG&C in Jackson, Michigan, registered or not,</p> <p>25 but they may be completed at other facilities.</p> <p style="text-align: center;">Page 19</p>	<p>1 Q. Okay. And when people are admitted and screened,</p> <p>2 are -- the registrants are admitted and screened,</p> <p>3 are there certain facilities that are deemed as</p> <p>4 more appropriate for them so that they wind up</p> <p>5 being steered to those facilities as opposed to,</p> <p>6 you know, any random prison?</p> <p>7 A. What do you mean --</p> <p>8 MS. HEYSE: I'm going to object to</p> <p>9 form, but go ahead and ask your question</p> <p>10 clarifying, James.</p> <p>11 A. What do you mean by screen?</p> <p>12 Q. Once they're through the initiation process and</p> <p>13 they're going to be sent out to a facility.</p> <p>14 What -- What I'm asking is, are there target</p> <p>15 facilities for them as opposed to, you know, any</p> <p>16 old general population unit that's appropriate for</p> <p>17 their classification level?</p> <p>18 MS. HEYSE: Again, I'm going to object</p> <p>19 to form, but you can answer if -- if you know how,</p> <p>20 James.</p> <p>21 A. I cannot speak to how central classification or</p> <p>22 transfer coordination works to move individuals on</p> <p>23 any type of timeline, whether they're registrants</p> <p>24 or not.</p> <p>25 Q. Yeah, I didn't mean timeline. I just meant are</p> <p style="text-align: center;">Page 20</p>

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<p>1 there locations that are viewed as more appropriate</p> <p>2 for registrants, for people that have committed sex</p> <p>3 offenses, so that they wind up being in some ways</p> <p>4 either segregated or concentrated?</p> <p>5 A. Not for registrants. I don't know if I need to</p> <p>6 push on that a little bit, but we don't distinguish</p> <p>7 registrant versus non-registrant.</p> <p>8 Q. Okay. I'll just say for people who committed sex</p> <p>9 offenses?</p> <p>10 A. We have five different prison facilities across the</p> <p>11 State of Michigan, they're designated sites for</p> <p>12 individuals who have a history of engaging in</p> <p>13 sexually-motivated criminal behavior.</p> <p>14 Q. Go okay. That's a -- That's exactly what I wanted</p> <p>15 to know. And then within those facilities are</p> <p>16 registrants who have committed sex offenses, are</p> <p>17 they segregated from the rest of the population in</p> <p>18 their own units?</p> <p>19 MS. HEYSE: So I'm going to object.</p> <p>20 Again, Paul, I'm struggling to see where this falls</p> <p>21 within the topics that you've identified here. You</p> <p>22 haven't even gotten into assessments. You're</p> <p>23 talking about housing, placement, issues that were</p> <p>24 not identified as something you wanted to talk</p> <p>25 about with these folks.</p> <p style="text-align: center;">Page 21</p>	<p>1 So I guess I'm struggling to see how</p> <p>2 that falls within these categories of topics about</p> <p>3 whether or not they're segregated or not, it has</p> <p>4 nothing to do with risk assessments, which is what</p> <p>5 I thought we were going to talk about today.</p> <p>6 MR. REINGOLD: Well, what I'm trying to</p> <p>7 figure out is where they go, because that's related</p> <p>8 to both the risk assessment and the programming</p> <p>9 that they're assigned. Okay?</p> <p>10 MS. HEYSE: I guess I would disagree</p> <p>11 with that -- with that summary and your assumption,</p> <p>12 but, again, I'm not going to allow these guys to</p> <p>13 answer questions that are outside of what you asked</p> <p>14 about here, because I don't see anything that talks</p> <p>15 about how these people are housed, where these</p> <p>16 people are placed. It talks about conducting risk</p> <p>17 assessments.</p> <p>18 So if you want to talk to somebody</p> <p>19 about housing decisions or placement decisions,</p> <p>20 these may not be the folks that you would have to</p> <p>21 talk to, and I would have to discuss that with them</p> <p>22 first to identify the people you should be speaking</p> <p>23 with on those topics.</p> <p>24 MR. REINGOLD: Well, if they're working</p> <p>25 with people in this classification of, you know,</p> <p style="text-align: center;">Page 22</p>
<p>1 people that have committed sex offenses, I mean, I</p> <p>2 could ask it a different way and say where do you</p> <p>3 go when you do this, but all I'm trying to do is</p> <p>4 figure out are they segregated.</p> <p>5 MS. HEYSE: I understand they may know</p> <p>6 the answer, but this is not a personal deposition.</p> <p>7 This is a 30(b)(6) deposition, which we get the</p> <p>8 opportunity to designate who we want to speak to</p> <p>9 those topics. So when we're talking about placing</p> <p>10 decisions and housing decisions, just because these</p> <p>11 two individuals might know the answer to that</p> <p>12 question doesn't mean it's an appropriate topic for</p> <p>13 discussion.</p> <p>14 So I mean, he's identified that there</p> <p>15 are five facilities that they're placed at. I just</p> <p>16 don't understand why you need to get into, you</p> <p>17 know, what the housing process is or how</p> <p>18 logistically they're housed. And if you can show</p> <p>19 me on the topics where that's located then we</p> <p>20 can -- we can, you know, get into that, but I think</p> <p>21 that, you know, I don't think that's relevant for</p> <p>22 purposes of determining how risk assessments are</p> <p>23 conducted.</p> <p>24 MR. REINGOLD: Are you instructing him</p> <p>25 not to answer?</p> <p style="text-align: center;">Page 23</p>	<p>1 MS. HEYSE: Yeah.</p> <p>2 MR. REINGOLD: Okay. All right. I</p> <p>3 will move on. That was my last question on the</p> <p>4 section anyway.</p> <p>5 BY MR. REINGOLD:</p> <p>6 Q. I've got some other preliminary questions, although</p> <p>7 these go directly to what happens when people are</p> <p>8 arriving. Excuse me.</p> <p>9 My understanding is that when people</p> <p>10 arrive at the facility, they've already been added</p> <p>11 to the -- to the registry by -- I think by the</p> <p>12 probation department at the point of sentencing or</p> <p>13 soon thereafter; is that right?</p> <p>14 A. I do not know that answer.</p> <p>15 Q. Okay. Is that something that your colleague would</p> <p>16 know?</p> <p>17 A. I do not know if he would know that answer.</p> <p>18 Q. Okay. That's fine. Let me ask it a different way.</p> <p>19 When people who have committed sex</p> <p>20 offenses arrive at the prison, is there a unit that</p> <p>21 does registration for them?</p> <p>22 A. I do not know that answer. We are far removed from</p> <p>23 the registration process as mental health</p> <p>24 assessment and treatment providers.</p> <p>25 Q. Okay. Okay. All right. So when people arrive and</p> <p style="text-align: center;">Page 24</p>

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<p>1 they've committed a registrable sex offense, how is</p> <p>2 it that they get steered on to the sex offender</p> <p>3 track; who -- how do they get identified as needing</p> <p>4 the kind of assessments that we're going to be</p> <p>5 talking about in a little while?</p> <p>6 A. The question is when people arrive, how are they</p> <p>7 steered towards receiving a sex offense risk</p> <p>8 assessment; is that what you're driving at me?</p> <p>9 Q. Yes.</p> <p>10 A. So when an individual arrives at RG&C for intake,</p> <p>11 our Static shop staffed under the office of</p> <p>12 planning and research engages in a file review and</p> <p>13 determines if a Static-99R can or cannot be scored</p> <p>14 according to manual guidelines.</p> <p>15 If a Static can be scored, they will</p> <p>16 score that Static and then update our computer</p> <p>17 systems based on that Static score.</p> <p>18 Q. Okay. If someone arrives who doesn't have a</p> <p>19 registrable sexual offense conviction, but they</p> <p>20 have a, you know, another conviction, a non-sex</p> <p>21 conviction, but one that had sexual motivation in</p> <p>22 it, can they also be put on the same track?</p> <p>23 A. Correct, they can be.</p> <p>24 Q. All right. And so the screener would be looking</p> <p>25 for those kinds of folks as well?</p> <p style="text-align: center;">Page 25</p>	<p>1 A. Correct.</p> <p>2 Q. All right. And if someone like that gets put on</p> <p>3 the track, are they then, you know, sort of subject</p> <p>4 to all of the same procedures or whatever as</p> <p>5 someone who has a registrable sex offense, or are</p> <p>6 they treated differently?</p> <p>7 A. We do not take whether the behavior is something</p> <p>8 that per MCO code can place them on the registry or</p> <p>9 not into consideration.</p> <p>10 Q. Okay. And is it also possible that people can get</p> <p>11 on this track later in their incarceration; for</p> <p>12 example, if they have a sexual misconduct in prison</p> <p>13 that would reveal their needs for these kinds of</p> <p>14 assessments and services?</p> <p>15 A. If an individual engages in sexually abusive</p> <p>16 behavior while incarcerated, and that behavior</p> <p>17 rises to the level to meet Static-99R manual</p> <p>18 guidelines for scoring, we can score them and we</p> <p>19 can provide treatment recommendations based on that</p> <p>20 score.</p> <p>21 Q. Okay. What about people who committed a</p> <p>22 registrable offense, but one that has no sexual</p> <p>23 motivation? I'll give you an example.</p> <p>24 We have as one of our main plaintiffs a</p> <p>25 John Doe who committed child kidnapping, but it was</p> <p style="text-align: center;">Page 26</p>
<p>1 during an armed robbery. He moved a store manager,</p> <p>2 and the store manager happened to have a child with</p> <p>3 her, and he pushed them into a room, you know,</p> <p>4 where the money was.</p> <p>5 Is someone like that eligible for a</p> <p>6 Static-99 or not?</p> <p>7 A. I can't speak to the individual case because I'm</p> <p>8 not aware of the actual behaviors involved. I can</p> <p>9 speak to the -- The Static does not take</p> <p>10 registration into consideration to determine</p> <p>11 whether or not we can score it. It's</p> <p>12 behavioral -- the criminal behaviors, the</p> <p>13 motivations for it is what we take into</p> <p>14 consideration.</p> <p>15 Q. All right. So the reason then the non-sex offense</p> <p>16 that's considered registrable isn't going to wind</p> <p>17 up being screened is because the Static-99 isn't</p> <p>18 norm for those people and, so as you said, you</p> <p>19 can't do the assessment, doesn't make any sense?</p> <p>20 MS. HEYSE: I'm going to object to</p> <p>21 form, but you can answer, James.</p> <p>22 A. So the -- You said the reason it is not screened.</p> <p>23 We would review based on the identified MCO code to</p> <p>24 make a determination about whether or not that</p> <p>25 Static can be scored. Again, we're looking at the</p> <p style="text-align: center;">Page 27</p>	<p>1 behaviors the individual engaged in to make a</p> <p>2 determination about potential risk and needs that</p> <p>3 are amenable to treatment and supervision.</p> <p>4 Q. All right. I think what I want to do now is turn</p> <p>5 to the operating procedure that you were talking</p> <p>6 about, so let me share my screen. It should work.</p> <p>7 And I've done some highlighting, which is mostly</p> <p>8 for my purposes, but it may help all of us. Can</p> <p>9 you see that?</p> <p>10 A. No, I cannot.</p> <p>11 MS. HEYSE: I'm not seeing anything,</p> <p>12 Paul. Yeah.</p> <p>13 Q. Oh, sorry. I forgot to hit the share button. Just</p> <p>14 a second. Now?</p> <p>15 A. Yes, I can see the screen.</p> <p>16 Q. So this is -- We'll have this marked as Exhibit 1,</p> <p>17 which is OP operating procedure 05.01.100. It's</p> <p>18 dated 8/29/22, and if anyone needs to know, it's a</p> <p>19 19-page document which are MDOC Bates numbers 6</p> <p>20 through 24.</p> <p>21 MARKED FOR IDENTIFICATION</p> <p>22 EXHIBIT #1</p> <p>23 11:38 a.m.</p> <p>24 Q. Let's just take it from the top.</p> <p>25 It says at the very first line of it is</p> <p style="text-align: center;">Page 28</p>

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<p>1 that the -- "To accurately assess, recommend, and</p> <p>2 provide evidence-based programming to eligible</p> <p>3 prisoners prior to their release to the -- into the</p> <p>4 community."</p> <p>5 That's the -- the purpose of this</p> <p>6 operating procedure. What is "evidence-based</p> <p>7 programming," or at least what does it mean to you?</p> <p>8 A. That would require a relatively long explanation; I</p> <p>9 will do my best to keep it short. Evidence-based</p> <p>10 programming incorporates actuarially-tied,</p> <p>11 research-driven risk assessment, criminogenic needs</p> <p>12 assessment, and responsivity addressed for the</p> <p>13 individual.</p> <p>14 So it's referred to as the risk, need,</p> <p>15 responsivity framework, that is what we employ</p> <p>16 within the Michigan Sexual Abuse Prevention Program</p> <p>17 within our facilities, as well as within our</p> <p>18 community.</p> <p>19 Q. And my understanding is that this is something that</p> <p>20 the MDOC emphasizes, almost any operating procedure</p> <p>21 or policy director that you open that has to do</p> <p>22 with assessment and programming will start with a</p> <p>23 line similar -- similar to this.</p> <p>24 Is this a break from the past, or is</p> <p>25 this something the department has been doing for</p> <p style="text-align: center;">Page 29</p>	<p>1 quite a while?</p> <p>2 MS. HEYSE: I'm going to object to</p> <p>3 form, but you can answer if you can.</p> <p>4 A. I can speak to within the -- the sexual abuse</p> <p>5 prevention services realm for the past, but I</p> <p>6 cannot speak outside of that.</p> <p>7 Q. That's fine.</p> <p>8 A. Historically, the Michigan Department of</p> <p>9 Corrections followed a one-size-fits-all model</p> <p>10 which was driven by MCO code to provide sex</p> <p>11 offender treatment. Historically, we employ</p> <p>12 subjective risk assessment to determine individuals</p> <p>13 likelihood of engaging further in sexually</p> <p>14 motivated offenses. That -- We do not do either</p> <p>15 one of those things within the MSAPP program</p> <p>16 anymore, inside our facilities, or in our</p> <p>17 community.</p> <p>18 Q. When did the switchover occur; I assume it was</p> <p>19 gradual, but when did it occur?</p> <p>20 A. The change to incorporating actuarially-tied</p> <p>21 relative risk assessment tools began with use of</p> <p>22 the VASOR, the Vermont Assessment of Sex Offender</p> <p>23 Risk, in 2009. Then we moved to use of the</p> <p>24 Static-99R in approximately 2010-2011 timeframe.</p> <p>25 Q. All right. So it's fair to say that it's been</p> <p style="text-align: center;">Page 30</p>
<p>1 roughly 14 years that you've been using</p> <p>2 evidence-based instruments?</p> <p>3 A. Correct.</p> <p>4 Q. All right.</p> <p>5 A. As far as the one-size-fits-all model programming,</p> <p>6 MSAPP was introduced in 2012, it ran along side the</p> <p>7 old SOP program, and was gradually phased out with</p> <p>8 full MSAPP implementation occurring in 2017.</p> <p>9 Q. All right. Thank you for you that. That was very</p> <p>10 helpful. Let's slide down a little bit on the</p> <p>11 document.</p> <p>12 All right. So on the operating</p> <p>13 procedure number one, when we get to the menu of</p> <p>14 assessments it says "actuarial and research-based</p> <p>15 risk assessment tools are utilized by the</p> <p>16 department to identify the risks and needs of every</p> <p>17 prisoner. Results of the assessment are utilized</p> <p>18 to assist in making program recommendations, to</p> <p>19 assist in making parole supervision and case</p> <p>20 management determinations."</p> <p>21 Say a little more about the actuarial</p> <p>22 parts of these tools; what does that mean; who is</p> <p>23 doing what that makes it actuarial?</p> <p>24 A. I will speak to that, however, I do know that</p> <p>25 Corey Spickler is a Static-99 trainer, and will be</p> <p style="text-align: center;">Page 31</p>	<p>1 able to spoke to this more eloquently than myself.</p> <p>2 I don't know if you want to pass that question to</p> <p>3 him, or I can answer it as well.</p> <p>4 Q. Give us the -- your best shot at a, you know, a</p> <p>5 reasonable-degree answer.</p> <p>6 A. Very good. So by "actuarial risk assessment" we</p> <p>7 are looking at a tool that has been normed with a</p> <p>8 similar population that is able to classify an</p> <p>9 individual's relative risk from engaging in that</p> <p>10 same behavior when compared to other individuals</p> <p>11 who engaged in that behavior.</p> <p>12 So it is not a measure of absolute</p> <p>13 risk, it a measure of relative risk. We know that</p> <p>14 individuals in certain risk categories engage at</p> <p>15 higher rates of sexually motivated recidivism than</p> <p>16 other individuals.</p> <p>17 So for example, we use Counsel State</p> <p>18 Government's risk classification system that</p> <p>19 provides level 1, 2, 3, 4A and 4B, risk</p> <p>20 categorizations or bins, and we know that out of</p> <p>21 100, the amount that will sector sort of a -- from</p> <p>22 bin 1 is much less than the amount that will</p> <p>23 recidivate that are in bin 4B. We don't know which</p> <p>24 ones out of that 100 will offend, we just know</p> <p>25 relative risk is greater.</p> <p style="text-align: center;">Page 32</p>

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<p>1 Q. What I take from that and what I want you to do is</p> <p>2 tell me if I'm right or wrong. This works a lot</p> <p>3 like the way life insurance companies price life</p> <p>4 insurance; that is they're able to look at a whole</p> <p>5 bunch of factors as to whether someone will die</p> <p>6 early or late, and they can norm those factors</p> <p>7 looking backwards, you know, like if it turns out</p> <p>8 that bald people -- bald men, you know, die</p> <p>9 younger, and it's specifically significant, I'm</p> <p>10 going to pay a higher premium because I might be in</p> <p>11 a higher risk category.</p> <p>12 And what they're doing is identifying</p> <p>13 the fact that they have the most influence on early</p> <p>14 or late death. Is that pretty much how it works?</p> <p>15 A. It appears that you've done your research. That is</p> <p>16 a good analogy to utilize when you're talking</p> <p>17 actual risk assessments related to predicting</p> <p>18 further sexually-motivated behavior.</p> <p>19 Q. All right. And my understanding is that these</p> <p>20 kinds of instruments, kind of like life insurance</p> <p>21 or actuarial work, get better over time because the</p> <p>22 more population you look at and the longer term you</p> <p>23 had to look at them, the more you can adjust the</p> <p>24 norm.</p> <p>25 So, you know, in the first few years</p> <p style="text-align: center;">Page 33</p>	<p>1 baldness doesn't show up a lot, but by 30-years old</p> <p>2 baldness is clearly significant, you're going to</p> <p>3 adjust the norming to give baldness to the higher</p> <p>4 rate. Is that what they're doing as they readjust</p> <p>5 the scoring?</p> <p>6 A. By "better," what are you referencing?</p> <p>7 Q. I mean more accurate.</p> <p>8 A. So better validity?</p> <p>9 Q. Yes, better validity, higher predictability of</p> <p>10 value.</p> <p>11 A. I would say that is -- that is accurate over time</p> <p>12 with more research, larger norming groups. At</p> <p>13 least I can speak to the Static from its original</p> <p>14 development to its current form has evidence and</p> <p>15 proved areas under the curved values over time.</p> <p>16 Q. Okay. All right. And this explains why these</p> <p>17 kinds of assessment tools are used a high priority</p> <p>18 for the department, right, compared to what was</p> <p>19 being used in the past, we know that these are</p> <p>20 statistically validated and create</p> <p>21 risk -- identifiable risk?</p> <p>22 MS. HEYSE: Object to form and</p> <p>23 foundation, but you can answer.</p> <p>24 A. I can't speak to the department's motivations at</p> <p>25 large outside of the MSAPP program or SAPP's</p> <p style="text-align: center;">Page 34</p>
<p>1 programming in general. Within SAPP's programming</p> <p>2 we are very interested in ensuring valid and</p> <p>3 reliable assessment information and provide it to</p> <p>4 all of our stakeholders, if that answers your</p> <p>5 question.</p> <p>6 Q. It does. So I mean, I take it that if you have a</p> <p>7 choice of evidence-based tools to use or</p> <p>8 nonevidence-based tools, the -- the overwhelming</p> <p>9 preference would be to make the evidence-based</p> <p>10 tools the -- the primary thing that you're using?</p> <p>11 A. For SAPP's purposes, absolutely, yes, we want to go</p> <p>12 with what the science says works.</p> <p>13 Q. All right. Now I want to move on to the -- the</p> <p>14 list of tools that are available. My first</p> <p>15 question is, are all of the ones that are listed</p> <p>16 below -- let's see, except for COMPAS -- are</p> <p>17 these -- are all of these used at least some of the</p> <p>18 time at the front end like close to intake or as</p> <p>19 part of intake or initial screening, or are some of</p> <p>20 them used more often or more regularly later on?</p> <p>21 A. I -- Sorry. Go ahead, Kristin.</p> <p>22 MS. HEYSE: It's okay. Can you</p> <p>23 clarify -- Are you asking in the context of the</p> <p>24 Program, Paul, because I think we talked about</p> <p>25 there are only certain assessments that these</p> <p style="text-align: center;">Page 35</p>	<p>1 individuals would be able to speak to, and</p> <p>2 I'm -- I'm looking at some of them, and they</p> <p>3 weren't ones that we had previously identified. So</p> <p>4 are you asking him which ones they used or -- I</p> <p>5 guess that's the point of my question.</p> <p>6 MR. REINGOLD: Mine is simply a timing</p> <p>7 question. When do these get used?</p> <p>8 MS. HEYSE: Well, they'll only be able</p> <p>9 to speak to the ones that they use. I mean, we had</p> <p>10 that discussion prior to this deposition that they</p> <p>11 weren't going to be able to speak to all</p> <p>12 assessments and when they were used. They were</p> <p>13 able to speak to the assessment tools they actually</p> <p>14 utilized. We can provide somebody to talk about</p> <p>15 the tool -- the timing of the tools that they don't</p> <p>16 use if you need somebody to do that then these guys</p> <p>17 aren't the ones to speak to those. So for</p> <p>18 example --</p> <p>19 MR. REINGOLD: I'm not asking about</p> <p>20 expertise with -- with the different tools. I'm</p> <p>21 asking about when they get used. That's all.</p> <p>22 MS. HEYSE: Okay. And I -- If you're</p> <p>23 asking specifically, like I can tell you we've had</p> <p>24 this discussion, and that is why I told you we need</p> <p>25 to bring somebody else in to talk about when some</p> <p style="text-align: center;">Page 36</p>

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<p>1 of these tools were used, because these individuals</p> <p>2 don't utilize them. I think we're speaking past</p> <p>3 each other here, or the example I can give you is</p> <p>4 the COMPAS. I've had conversations with these</p> <p>5 individuals, they don't know about the ins and outs</p> <p>6 and uses of COMPAS, they don't know when it's done</p> <p>7 and how it's done. We would have to provide</p> <p>8 somebody else to do that.</p> <p>9 MR. REINGOLD: That's why I took COMPAS</p> <p>10 out of this question.</p> <p>11 MS. HEYSE: Okay.</p> <p>12 MR. REINGOLD: I'm not asking about</p> <p>13 COMPAS. I'm asking about the ones that apply to</p> <p>14 people who have committed sex offenses.</p> <p>15 MS. HEYSE: Okay. I think that's a</p> <p>16 more narrow question. James, are you clear on</p> <p>17 that, then?</p> <p>18 THE WITNESS: I'm not. If you would</p> <p>19 not mind repeating the question, please.</p> <p>20 BY MR. REINGOLD:</p> <p>21 Q. Yeah. All I want to know is of 2, 3, 4, and 5, are</p> <p>22 all of those used at the front end as part of the</p> <p>23 screening, or are some of them more likely to be</p> <p>24 used later on?</p> <p>25 A. I should note that none of these are screening</p> <p style="text-align: center;">Page 37</p>	<p>1 tools.</p> <p>2 Q. You're right. I should have said assessment.</p> <p>3 A. No, the Static-99 is completed at the front end.</p> <p>4 Q. Okay. And are there some people who might get a</p> <p>5 Stable-2007 at the front end?</p> <p>6 A. Yes, there are some that might get the Stable-2007</p> <p>7 at the front end.</p> <p>8 Q. And what would the reasons for something like that?</p> <p>9 A. The -- When an individual becomes within seven</p> <p>10 years of their earliest release date, we request a</p> <p>11 Stable evaluation to be completed in order to</p> <p>12 determine their overall priority risk</p> <p>13 categorization.</p> <p>14 Q. All right. So what you're saying is -- and correct</p> <p>15 me if I'm wrong -- is that at some point everyone</p> <p>16 is going to get -- everyone in the group we're</p> <p>17 talking about, people who committed sex offenses,</p> <p>18 everyone is going to get a Stable-2007 assessment</p> <p>19 in addition to their Static-99 within some point</p> <p>20 within seven years of their release or parole</p> <p>21 eligibility?</p> <p>22 A. Not necessarily. There are different rules for</p> <p>23 scoring the Static in the state. So an individual</p> <p>24 must have a conviction on that Stable, where as the</p> <p>25 Static can be scored on a charge only. So there</p> <p style="text-align: center;">Page 38</p>
<p>1 are some cases where we can score Static, but we</p> <p>2 cannot score Stable.</p> <p>3 Q. Okay. All right. That makes good sense to me.</p> <p>4 But what you're saying is everybody who has a</p> <p>5 conviction will line up with both?</p> <p>6 A. Every adult male who engaged in sexually abusive</p> <p>7 behaviors that meets manual guidelines for scoring</p> <p>8 will have a Static and Stable prior to parole</p> <p>9 consideration.</p> <p>10 Q. No, I -- I love that you're so careful with the</p> <p>11 answer because that's -- it's helpful to me.</p> <p>12 You're making clear distinctions. All right.</p> <p>13 The COMPAS I want to bypass out of</p> <p>14 difference to what your counsel has said. I can</p> <p>15 say it appears that it's sort of the overarching</p> <p>16 assessment for everybody, and it becomes the</p> <p>17 document that's teed to lots of programming down</p> <p>18 the road, but you're not the people to address that</p> <p>19 with, so I'll bypass that.</p> <p>20 So what we know is that if COMPAS is</p> <p>21 what everybody's going to get, 2 through 6 are what</p> <p>22 subpopulations either will or might get. And I'm</p> <p>23 not interested in number 6 which has to do with</p> <p>24 substance abuse, and I want to focus on number 2 a</p> <p>25 little further down the road. And so I just want</p> <p style="text-align: center;">Page 39</p>	<p>1 to ask a few questions about 3, 4, and 5, to</p> <p>2 distinguish them from what we will learn in a</p> <p>3 little while about number 2.</p> <p>4 Stable-2007 is described as a dynamic</p> <p>5 risk instrument, and it's only for adult male sex</p> <p>6 offenders. And what I want to know is can you</p> <p>7 describe the difference between a Static assessment</p> <p>8 instrument and a dynamic risk one?</p> <p>9 A. I can. A Static risk assessment is looking at</p> <p>10 primarily historical indicators that have been</p> <p>11 linked through research that relate to risk for</p> <p>12 further engagement and the behavior it's trying to</p> <p>13 assess. So for the Static it would be for further</p> <p>14 engagement sexually-motivated crime looking at</p> <p>15 historical features.</p> <p>16 The term "Static" itself implies stuck,</p> <p>17 stuck in time. They are not treatment targets for</p> <p>18 us. It's primarily -- even though some</p> <p>19 professional judgment is required -- an objective</p> <p>20 assessment of risk based on official criminal</p> <p>21 justice records historical factors.</p> <p>22 The Stable-2007 is looking at</p> <p>23 personality characteristics, learned behaviors,</p> <p>24 skill deficits, things that are linked to further</p> <p>25 criminal behavior as well, but it involves a higher</p> <p style="text-align: center;">Page 40</p>

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<p>1 level of structured professional judgement, but</p> <p>2 also has very clear manual guidelines on how to</p> <p>3 score.</p> <p>4 So it's -- The intention there also is</p> <p>5 to be dispassionate, objective in how we assess</p> <p>6 criminogenic need. So it's -- Those -- The Stable</p> <p>7 will -- will help us identify things to target in</p> <p>8 treatment that are amenable to change, as well as</p> <p>9 things that we should pay attention to while an</p> <p>10 individual is on supervision that could potentially</p> <p>11 be linked to further sexually-motivated criminal</p> <p>12 behavior.</p> <p>13 Q. And is the Stable something that might get done</p> <p>14 more than once as a person's behavior changes, so</p> <p>15 that in some way you can measure those changes in a</p> <p>16 way that you have confidence?</p> <p>17 A. Yes, the Stable is expected to change, but not</p> <p>18 drastically over the course of time.</p> <p>19 Q. He -- Go ahead. Sorry.</p> <p>20 A. No, go ahead. That's . . .</p> <p>21 Q. Is the Stable also helpful -- and I'm thinking of</p> <p>22 an example, you know, I'm thinking on the margins.</p> <p>23 There must be people who have, let's say, a very</p> <p>24 high risk -- or let's say moderately high risk, you</p> <p>25 know, Static-99 score, but very quickly people</p> <p style="text-align: center;">Page 41</p>	<p>1 around them and their treaters, whatever, come to</p> <p>2 have great confident in them, that even though they</p> <p>3 have a high Static score, they -- they seem, you</p> <p>4 know, incredibly responsible and safe.</p> <p>5 Is someone like that -- Is the Stable</p> <p>6 something that can then be used to get a fuller</p> <p>7 picture of that person, and I assume the reverse</p> <p>8 can be true as well; you might have somebody who</p> <p>9 has got a really low score but it scares the hell</p> <p>10 out of everybody, and you want to do a Stable to,</p> <p>11 again, have more confidence in the assessment.</p> <p>12 Does it get used that way?</p> <p>13 MS. HEYSE: Object to form, but you can</p> <p>14 answer.</p> <p>15 Q. Yes, there was a lecture in the question at the</p> <p>16 end.</p> <p>17 A. Right. So is the question essentially if somebody</p> <p>18 scares the hell out of you and their Static score</p> <p>19 was low, would we do the Stable?</p> <p>20 Q. Yes.</p> <p>21 A. We do the Stable on anybody who meets scoring</p> <p>22 criteria regardless of any emotional response to</p> <p>23 the case.</p> <p>24 Q. Okay. That's -- That's a good answer, too. It</p> <p>25 shows me you're -- you're well trained. This is</p> <p style="text-align: center;">Page 42</p>
<p>1 what the manual requires, and you're doing it, so</p> <p>2 that's good. Okay.</p> <p>3 In the training for doing the Stable,</p> <p>4 how long does it take to be trained?</p> <p>5 A. So the training is quite a process to become -- I'm</p> <p>6 trying to think how to not oversimplify this.</p> <p>7 Training must be received from a SORA-certified</p> <p>8 trainer. That trainer then can engage in the</p> <p>9 dynamic supervision protocol, which is how the</p> <p>10 Static and Stable were normed; it's referred to as</p> <p>11 the trainer model.</p> <p>12 So that individual who is trained by</p> <p>13 what's referred as a master trainer, that requires</p> <p>14 a review of all the literature for taking in an</p> <p>15 exam and presenting in front of the master trainers</p> <p>16 to get that certification, then that trainer</p> <p>17 engages in training of staff.</p> <p>18 That typically takes 8 to 10 hours to</p> <p>19 complete the training, and involves case study at</p> <p>20 the end to ensure that the individual who is</p> <p>21 trained understood the concepts, as well as</p> <p>22 continued consultation following that training.</p> <p>23 Q. Is part of the training having them do, you know,</p> <p>24 scoring somebody, and then having the trainer or a</p> <p>25 trainer equivalent scoring, and making sure they're</p> <p style="text-align: center;">Page 43</p>	<p>1 coming out at the same place?</p> <p>2 A. Correct. That is done at the end of all the</p> <p>3 Stable-2007 trainings.</p> <p>4 Q. And of the 150 people that you said are in a</p> <p>5 position to do Static-99 assessments, how many of</p> <p>6 them are trained to do the Stable-2007?</p> <p>7 A. I cannot give you an exact answer on that. I can</p> <p>8 approximate if that's --</p> <p>9 Q. That's fine. Yeah, just rough.</p> <p>10 A. Within the Department of Corrections I would say</p> <p>11 approximately 150 individuals have been trained to</p> <p>12 utilize the Stable-2007 that are currently</p> <p>13 employed.</p> <p>14 Q. Okay. All right. Let's move down to the -- the</p> <p>15 next instrument. I'll drop this down here. This</p> <p>16 one is tough because it has the same acronym, SORA,</p> <p>17 as the Sex Offender Registration Act, and I'll</p> <p>18 refer to it as the SO risk assessment.</p> <p>19 This is a written psychological</p> <p>20 evaluation report following an interview, and it</p> <p>21 can be used to support or override risk levels</p> <p>22 identified in the actuarial risk instruments.</p> <p>23 Does every prisoner who has committed a</p> <p>24 sex offense get this evaluation?</p> <p>25 A. Every prisoner who is engaged in sexually-motivated</p> <p style="text-align: center;">Page 44</p>

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<p>1 criminal behavior, per administrative rule, must 2 receive a SORA. 3 Q. Okay. And is the SORA -- Let me ask it a different 4 way. 5 Do people who haven't committed sex 6 offenses also have a psychological evaluation at 7 intake that's different from this? 8 A. People who have not committed sexually-motivated 9 crimes? 10 Q. Yeah, do they have a more general psychological 11 eval? 12 A. I can't speak to what goes on outside of the 13 Sexual Abuse Prevention Services, whether it 14 qualifies as a psych eval or not. 15 Q. Okay. And do the people who committed sex 16 offenses, do you know if they get a psychological 17 evaluation that's more general than this one, or 18 are they getting two, or just the one? 19 A. They could potentially also receive psychological 20 evaluation depending on what the potential concerns 21 or needs are -- or concerns about response to 22 treatment or supervision maybe. I'm not aware of 23 any type of rule that we require that. 24 Q. Okay. 25 A. The SORA meets administrative rule requirements for</p> <p style="text-align: center;">Page 45</p>	<p>1 an evaluation of those engaged in sexually-abusive 2 behaviors. 3 Q. Okay. So I take it that the -- I'll call it again 4 the SO risk assessment -- this one is not an 5 evidence-based instrument, but instead is a more 6 traditional method where someone does an interview, 7 and then based on that skill or experience or maybe 8 whatever, maybe a gut feeling says either I agree 9 with the actuarial research-based instruments, or 10 they might say I disagree and I'd recommend raising 11 or lowering the score; is that part of what's 12 happened? 13 A. No, this is the -- The Sex Offense Risk Assessment 14 is -- is not a tool. It's a combination of the 15 Static and the Stable and Biopsychosocial 16 Evaluation put into one format. So it incorporates 17 the Static and the Stable into one format. 18 As far as support override risk levels, 19 that is something that is not done. The risk is 20 the risk. We can support or override treatment 21 recommendations based on that risk level. 22 Q. All right. So what you're saying is that the last 23 sentence of number 4 is not really accurate 24 anymore? 25 A. To the best of my knowledge, no, it is not accurate</p> <p style="text-align: center;">Page 46</p>
<p>1 anymore. 2 Q. Okay. That's great and that takes out some of my 3 questions. Okay. 4 Does that evaluation go into the 5 person's medical or psychological record? 6 A. It does. 7 Q. And does it also go to the parole board at the 8 appropriate time? 9 A. It does. 10 Q. Okay. And so just to make sure I -- I understand, 11 virtually everybody coming in with a 12 sexually-oriented crime is going to get the SO risk 13 assessment in addition to a Static-99 as part of 14 intake or the initial process coming in? 15 A. They do not receive a SORA at the -- at the intake, 16 no. 17 Q. Oh, when is that done? I misunderstood. 18 A. A SORA is typically done within two years of the 19 parole board jurisdiction date -- sorry, earliest 20 release date, not the parole board jurisdiction 21 date. Within two years of their earliest release 22 date is when a SORA is requested and administered. 23 Q. I thought I read somewhere that parole board 24 jurisdiction and earliest release date and are the 25 same?</p> <p style="text-align: center;">Page 47</p>	<p>1 A. And see, I don't know that for sure. I do know 2 it's ERD, earliest release date. 3 Q. Yeah. Okay. And then let's take a quick look 4 at -- on number 5, the professor. That's a 5 checklist designed to identify and summarize 6 protective and risk factors for adolescents and 7 emerging adults. 8 Is this one an evidence-based 9 instrument, or is it more -- or not? You tell me. 10 A. I do not believe it meets criteria to 11 be -- it's -- again, it's not a risk assessment. 12 It was never -- Dr. Warlien{sp}, the developer, did 13 not intend it to be a risk assessment. It is a 14 treatment guide based on evidence-based principals 15 for what is effective with juvenile-only offenders. 16 Q. And so it's mostly looking at identifying factors 17 that will steer the treater in one direction or 18 another? 19 A. Correct. 20 Q. When somebody comes in as an adolescent or emerging 21 adult and is in prison into adulthood, did they 22 then get the Static-99, or are adolescents and 23 emerging adults getting the Static-99 as well; is 24 that norm for young people, too? 25 A. There's -- Sorry, there's a couple questions there.</p> <p style="text-align: center;">Page 48</p>

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<p>1 Q. Yeah, let me back off that.</p> <p>2 Do adolescents and emerging adults get</p> <p>3 the Static-99 at the front end?</p> <p>4 A. How are you defining adolescents?</p> <p>5 Q. I can only read what's here, so I -- I'm</p> <p>6 reading -- You will have to tell me how -- how you</p> <p>7 define it.</p> <p>8 A. So if an individual meets criteria for scoring on</p> <p>9 the Static-99R, then we will score them and utilize</p> <p>10 that tool to drive treatment recommendations. If</p> <p>11 an individual does not meet scoring criteria on the</p> <p>12 Static-99R is what we would consider a youthful</p> <p>13 offender. The professor can be used with the</p> <p>14 individual during the course of treatment.</p> <p>15 Q. All right. And is there an age cutoff for the</p> <p>16 Static-99R?</p> <p>17 A. There is an age cutoff for the Static-99R.</p> <p>18 Q. And what is it?</p> <p>19 A. I will need to refer to the Static manual because</p> <p>20 unfortunately this is a relatively nuanced --</p> <p>21 Q. Yeah, that's all right. I just wanted to know if</p> <p>22 this was a -- All right.</p> <p>23 So now my question is, once the person</p> <p>24 passes the cutoff, will they be scheduled for a</p> <p>25 Static-99R?</p> <p style="text-align: center;">Page 49</p>	<p>1 A. No, the age at time of engaging in sexually abusive</p> <p>2 behaviors is primarily what matters for scoring the</p> <p>3 Static. So if somebody is 65-years old and they</p> <p>4 engaged in sexually abusive behaviors at 15 and had</p> <p>5 no other history of sexually abusive behaviors, we</p> <p>6 could not score the Static-99R on them.</p> <p>7 Q. Yeah, I'm looking at a different way. I'm saying</p> <p>8 if an adolescent comes in, can't be scored on the</p> <p>9 Static-99, gets the professor, and then, you know,</p> <p>10 three years later or four years later has gone from</p> <p>11 adolescent or emerging adult to adult, will that</p> <p>12 trigger to them getting a Static-99R?</p> <p>13 A. I guess I'm still struggling to understand what</p> <p>14 you're asking here.</p> <p>15 Q. Well, when you told me you can't get it at the</p> <p>16 front end because they're too young and it's not</p> <p>17 norm for them -- or they don't meet the criteria,</p> <p>18 however you want to phrase it. And now they've</p> <p>19 been in prison 3 or 4 years, and have now passed</p> <p>20 whatever the age limitation is. And I'm just</p> <p>21 asking, does that mean now they'll get a Static-99?</p> <p>22 A. No, they will not get a Static-99 at that point</p> <p>23 because --</p> <p>24 Q. And why not?</p> <p>25 A. Because the age for consideration is based upon how</p> <p style="text-align: center;">Page 50</p>
<p>1 old they were at the time of engaging in the</p> <p>2 sexually abusive behaviors.</p> <p>3 Q. All right. And that's why the Static-99 is done as</p> <p>4 soon as it can be after the commission of the</p> <p>5 crime?</p> <p>6 A. That's relatively irrelevant.</p> <p>7 Q. Oh. I didn't understand your last answer then.</p> <p>8 A. So again, if -- excuse me. If somebody engages in</p> <p>9 a sexually motivated crime, age 14, and they come</p> <p>10 to prison at age 42 --</p> <p>11 Q. No, no, that's not my hypothetical anymore. My</p> <p>12 hypothetical is if someone -- let's say someone</p> <p>13 commits a crime at just below the Static-99 age and</p> <p>14 comes into prison and gets the professor, and</p> <p>15 within a couple years they're over the Static-99R</p> <p>16 age.</p> <p>17 Is what prevents them from then getting</p> <p>18 the Static-99 is that the behavior is two years</p> <p>19 back and you can't do it, or is there some other</p> <p>20 reason?</p> <p>21 A. What prevents the use of Static-99R is how old they</p> <p>22 were at the time of engaging in the behaviors. My</p> <p>23 knowledge I do think applies to your question.</p> <p>24 Q. Okay. So you're saying if they meet the cutoff at</p> <p>25 the time of the crime then you can't -- you can't</p> <p style="text-align: center;">Page 51</p>	<p>1 get that time back. Right; that's fixed?</p> <p>2 A. It's based on how the Static was normed.</p> <p>3 Q. Yeah. Yeah. I understand it now. That makes</p> <p>4 sense.</p> <p>5 Let's turn to the Static-99R itself.</p> <p>6 You've answered a lot of the questions that I had</p> <p>7 for this section about training, and I just want to</p> <p>8 check to see if there's anything else that we</p> <p>9 didn't cover about training.</p> <p>10 I think we covered what I wanted. Oh,</p> <p>11 are there any educational requirements to be</p> <p>12 trained for the Static-99?</p> <p>13 A. SORA defines the training requirements or the</p> <p>14 requirements for the Static scoring, and there are</p> <p>15 no educational obtainment requirements, it requires</p> <p>16 to be trained by a certified trainer.</p> <p>17 Q. Are a lot of people who are doing the training</p> <p>18 within the department psychologists or clinical</p> <p>19 social workers?</p> <p>20 A. The -- We have at current time five trainers in the</p> <p>21 Static-99R; four of them have masters degrees, one</p> <p>22 has a bachelors degree.</p> <p>23 Q. And the people that they're training, are a</p> <p>24 significant number of them psychologists or social</p> <p>25 workers, or not?</p> <p style="text-align: center;">Page 52</p>

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<p>1 A. I think you need to define "significant." The --</p> <p>2 Q. Well, again, we said we've got 150 people who are</p> <p>3 using this instrument. I'm just trying to get a</p> <p>4 feel for, you know, whether half of them, you know,</p> <p>5 have a -- a masters degree or something like that,</p> <p>6 or none of them.</p> <p>7 A. The majority of individuals who are trained in</p> <p>8 Static have a masters degree or higher; not all of</p> <p>9 them.</p> <p>10 Q. Okay. That's what I thought, but I'm trying to</p> <p>11 make sure I got it right. All right.</p> <p>12 If we drop further down this document</p> <p>13 to "D," in the middle of "D" it says the "case</p> <p>14 plan" -- which I think is the COMPAS case</p> <p>15 plan -- "provides the prisoner with an outline of</p> <p>16 programing based on his or her needs" and so on.</p> <p>17 But then it says "as identified by an</p> <p>18 actuarial risk assessment, for example COMPAS or</p> <p>19 Static-99R, etcetera, it will be completed during</p> <p>20 the presentence investigation prior to his or her</p> <p>21 incarceration, and then also prior to release on</p> <p>22 parole."</p> <p>23 That suggests to me that the great</p> <p>24 majority of COMPAS and Static-99R assessments are</p> <p>25 being done before people arrive at the prison. And</p> <p style="text-align: center;">Page 53</p>	<p>1 that came as a surprise to me if it's true, because</p> <p>2 in other places, including above, I thought the</p> <p>3 menu of things we were looking at were things that</p> <p>4 were likely to occur in the prison.</p> <p>5 So my question is what percentage of</p> <p>6 the Static-99R's are done in field around the time</p> <p>7 of sentencing and the completion of the PSI, and</p> <p>8 what percentage are done when people arrive at the</p> <p>9 prison?</p> <p>10 A. To my knowledge those that are sentenced to prison</p> <p>11 do not get them done during the presentence</p> <p>12 evaluation, they are done upon their arrival at</p> <p>13 RG&C.</p> <p>14 Q. Okay. So again, the green highlighting in "D" is</p> <p>15 probably either out of date or just plain wrong?</p> <p>16 A. I did not write that, so I can't -- To the best of</p> <p>17 my knowledge they are completed at RG&C.</p> <p>18 Q. Okay. That's certainly what I'm -- I mean, people</p> <p>19 doing PSI's have more than enough to do, but it</p> <p>20 seemed bizarre to me that they would also be doing</p> <p>21 COMPAS or Static-99R's at that time.</p> <p>22 To make sure I've got this right, is it</p> <p>23 fair to say that the -- the vast majority of people</p> <p>24 coming into prison with a sexual offense or</p> <p>25 equivalent, that would make them eligible to be</p> <p style="text-align: center;">Page 54</p>
<p>1 assessed with a Static-99R, arrived without that</p> <p>2 having been done?</p> <p>3 A. That would be fair to say.</p> <p>4 Q. All right. And that means in some respects you</p> <p>5 have more control over the process, and virtually</p> <p>6 all of the assessing that's being done is being</p> <p>7 done by highly-trained professionals whom you had</p> <p>8 trained and who have been trained by the agency</p> <p>9 that administers the Static-99R itself?</p> <p>10 MS. HEYSE: Object to form, but you can</p> <p>11 answer, James.</p> <p>12 A. Trained -- The Static-99R's are primarily completed</p> <p>13 Static shop staff out of the central office, which</p> <p>14 is a smaller group of individuals than the 150 that</p> <p>15 are trained. They are trained according to SORA</p> <p>16 criteria.</p> <p>17 Q. All right. Okay. So there's a second group of</p> <p>18 people who also do Static-99R's at intake who have</p> <p>19 been fully trained, but they're not under your</p> <p>20 hospice, they're in a separate unit?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And are those periodically reviewed by</p> <p>23 your office, anything like that?</p> <p>24 A. There's no formal review process in place</p> <p>25 for -- between behavioral health care services and</p> <p style="text-align: center;">Page 55</p>	<p>1 offices of planning and research for reviewing</p> <p>2 validity or liability if the Static course is</p> <p>3 completed by the Static shop.</p> <p>4 Q. Okay. And how many people are doing that?</p> <p>5 A. How many employees in the Static shop?</p> <p>6 Q. Yes.</p> <p>7 A. Two that I'm aware of.</p> <p>8 Q. Okay. All right. In part of our requests to the</p> <p>9 department, we were asking about numbers of</p> <p>10 Static-99's that were completed for the entire</p> <p>11 prison population, and we were told that we could</p> <p>12 get that information, at least accurately I think,</p> <p>13 only for one year, 2022, and we said that's fine.</p> <p>14 And the answer was it was a total of 1,634</p> <p>15 Static-99Rs were completed in 2022 for 1,574 unique</p> <p>16 individuals.</p> <p>17 I understand that Static-99R's can be</p> <p>18 done at the front end as part of the intake, or</p> <p>19 will be done at the front end as part of the</p> <p>20 intake, and will also be done at the back end for</p> <p>21 purposes of parole.</p> <p>22 And so what I'm asking here is out of</p> <p>23 this number can you estimate for me the approximate</p> <p>24 percentage of the front end intake assessments</p> <p>25 versus the back end parole exit assessments?</p> <p style="text-align: center;">Page 56</p>

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<p>1 MS. HEYSE: So Paul, again, I don't</p> <p>2 think this falls -- This is one of the topics that</p> <p>3 we pulled out, because if we're talking numbers and</p> <p>4 statistics, that's something that's going to be</p> <p>5 handled by research.</p> <p>6 MR. REINGOLD: I just gave you the</p> <p>7 numbers that we got, and I have the question about</p> <p>8 the numbers --</p> <p>9 MS. HEYSE: Can I finish speaking</p> <p>10 before you jump in?</p> <p>11 MR. REINGOLD: Yep. Sorry. Didn't</p> <p>12 mean to interrupt.</p> <p>13 MS. HEYSE: That's okay. It's hard</p> <p>14 with Zoom going back and forth. These -- You're</p> <p>15 asking for them to identify a percentage of these</p> <p>16 numbers, and I'm suggesting you if we're talking</p> <p>17 about statistics or numbers or percentages, that's</p> <p>18 probably a question that needs to be reserved for</p> <p>19 research.</p> <p>20 MR. REINGOLD: I'll be happy to take an</p> <p>21 "I don't know" answer if that's what it is, but if</p> <p>22 he knows, I think it's a perfectly fine question.</p> <p>23 MS. HEYSE: But here's the principal I</p> <p>24 have with this, Paul. This is a 30(b)(6)</p> <p>25 deposition, so we're not talking James Kissinger's</p> <p style="text-align: center;">Page 57</p>	<p>1 personal knowledge. You're asking the department</p> <p>2 to put up a representative that's speaking on</p> <p>3 behalf of the department about these numbers.</p> <p>4 So if you want accurate numbers, then I</p> <p>5 think we need the appropriate people designated,</p> <p>6 and we specifically asked for that to be pulled out</p> <p>7 of the topics because any numbers would have to be</p> <p>8 talked about with research. So that's our concern,</p> <p>9 is that we're blurring the lines with a 30(b)(6)</p> <p>10 dep where there's a representative speaking, and</p> <p>11 then a personal individual.</p> <p>12 I mean, he can certainly say he doesn't</p> <p>13 know in his personal capacity, but that's not</p> <p>14 really relevant for purposes of a 30(b)(6)</p> <p>15 deposition. Right?</p> <p>16 MR. REINGOLD: What I thought I had</p> <p>17 said is that we weren't going to talk about</p> <p>18 aggregate numbers -- or we would only talk about</p> <p>19 aggregate numbers and percentages, and that what we</p> <p>20 weren't going to do was say how about, you know,</p> <p>21 not 2021 or 2020, or something like that.</p> <p>22 All I'm trying to do is figure out</p> <p>23 where the resources are going, how much goes to</p> <p>24 front end, and how much goes to back -- I can do it</p> <p>25 without numbers. I can simply say of the number of</p> <p style="text-align: center;">Page 58</p>
<p>1 Static-99's that were done, what percentages of</p> <p>2 front end, and what percentages of back end. I</p> <p>3 don't see how that exceeds what we're talking</p> <p>4 about.</p> <p>5 MS. HEYSE: I thank that's a different</p> <p>6 question.</p> <p>7 MR. REINGOLD: Let me frame it that</p> <p>8 way.</p> <p>9 BY MR. REINGOLD:</p> <p>10 Q. Of the total numbers of Static-99R's that are done,</p> <p>11 what percentage are done for front end assessment,</p> <p>12 and what percentage are done for back end? That's</p> <p>13 a better way.</p> <p>14 A. So it will be hard for me to give any percentages</p> <p>15 because I have not researched that. I think I can</p> <p>16 answer this question, though, and be helpful.</p> <p>17 The RG&C statics are completed on the</p> <p>18 individual when they come in by the Static shop.</p> <p>19 All cases are screened to see if they can meet</p> <p>20 criteria for scoring. If they're scored -- If they</p> <p>21 can be scored, they are scored.</p> <p>22 When the individual becomes within</p> <p>23 eligibility timeframes for further evaluation,</p> <p>24 whether that's a sex offender risk assessment or a</p> <p>25 Stable-2007 only, the evaluator must verify the</p> <p style="text-align: center;">Page 59</p>	<p>1 Static scoring. So it's essentially to ensure that</p> <p>2 we are providing valid scores to our stakeholder.</p> <p>3 So it's looked at again to make sure</p> <p>4 there was nothing missed. The Static has question</p> <p>5 number 2 on the Static sometimes does require an</p> <p>6 interview, and that's reference to whether they've</p> <p>7 ever lived with a lover for two years or more. So</p> <p>8 some score changes can occur as a result of those</p> <p>9 interviews.</p> <p>10 And the Static manual speaks to the</p> <p>11 allowance of that one-point deviation as a result.</p> <p>12 So it's essentially looked at twice to ensure that</p> <p>13 we're providing valid and reliable information.</p> <p>14 Q. Are there any other -- Strike that. I'll return to</p> <p>15 this later. All right.</p> <p>16 So what you're telling me is that the</p> <p>17 ones that are done originally get reviewed at the</p> <p>18 back end and might get corrected up to one point,</p> <p>19 but that didn't address even a very rough</p> <p>20 percentage as to -- as to how much is going -- I'm</p> <p>21 trying to figure out where the resources are going.</p> <p>22 Are they mostly occurring when people</p> <p>23 come in, or -- or out of however many you do in a</p> <p>24 year, what percentage of the back end ones are</p> <p>25 being done?</p> <p style="text-align: center;">Page 60</p>

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<p>1 A. I think that question was more about how many are 2 going out on parole versus how many are coming from 3 the front door. 4 Q. That's what I'm asking, if you know, just roughly. 5 A. I do not know. 6 Q. Okay. That's probably how we figure it out because 7 the bottom line is everybody is getting one at both 8 ends -- or almost everyone is getting one at both 9 ends -- and so intakes or outflow would tell us the 10 answer to that; is that right? 11 A. Correct. Sorry, I was shaking my head like you 12 told me not to. 13 Q. All right. And then one other thing that was 14 unusual about the numbers was there were 60 15 repeats. It said so many were done for -- more 16 were done than the number of unique individuals. 17 And my question is, why would there 18 be -- What accounts for that; why would there be 60 19 repeats? 20 A. Potentially, an individual's age moved him to a 21 different bracket which would cause a change in the 22 score. 23 Q. All right. That's exactly what I -- what I 24 thought. So what you're saying is although the 25 Static-99R deals almost entirely with Static</p> <p style="text-align: center;">Page 61</p>	<p>1 features, age is not a Static feature and it can 2 change the score if enough time has passed? 3 A. That's correct. 4 Q. Okay. 5 A. In most cases. 6 Q. How much time does it take to do a Static-99 score, 7 let's say, assuming all the information you need is 8 in the file? 9 A. I don't know if I'm able to adequately address that 10 question outside of my own personal anecdotal 11 level. 12 Q. I'm looking sort of for an average time, you know, 13 if you're in training and somebody raising their 14 hand and says, you know, what's the average it 15 should take me to get one of these done assuming 16 I've got all the information? 17 A. The time to score Static is going to depend largely 18 upon the history of the person in front of you. 19 Somebody is on their "F" prefix and has a rather 20 extensive history, versus someone that has an 21 "A" prefix and doesn't. So the times do vary, so 22 it would be hard to kind of pigeonhole or give you 23 an exact timeframe. 24 Q. Can you give me an average for an easy one and an 25 average for a hard one?</p> <p style="text-align: center;">Page 62</p>
<p>1 A. From my own personal experience for an easy one, 2 15 minutes; for a hard one that involves 3 consultation, which the hard ones often do, up to 4 an hour. 5 Q. Okay. Great. All right. 6 And can you just say a short word or 7 two about how the assessor calculates the score? 8 A. The Static-99R? 9 Q. Yes. 10 A. According to manual guidelines. 11 Q. Okay. So basically you're putting checkmarks in 12 for the different factors, and then there's some 13 kind of sheet that's built into it that gives you 14 the score? 15 A. That is correct. It's entered into COMPAS that 16 does the tabulations automatically based on what is 17 identified as present or not. 18 Q. Okay. All right. And then you said that with the 19 Static-99 there are five risk levels; 1, 2, 3, 4A 20 and 4B. Do the risk levels have names in addition 21 to numbers? 22 A. They -- They do. 23 Q. And what are the five risk levels? 24 A. Level 1 is referred to as very low risk. Level 2, 25 below average risk. Level 3, above</p> <p style="text-align: center;">Page 63</p>	<p>1 average -- sorry -- level 3, average risk. Level 2 4A, above average risk. And level 4B, well above 3 average risk. 4 Q. All right. And if you -- If you're looking at the 5 scores cumulatively, do the -- do the scores wind 6 up being divided across the five risk 7 categories, will they be equally populated, or will 8 there be a concentration on one side or the other? 9 A. Are you asking for accurate information? 10 Q. No, no. I'm asking how -- how the -- the levels 11 work. You know, like if you're in college and 12 someone will say, oh, your grades are in the second 13 quintile or in the forth quintile, and all four 14 quintiles will have the same number of people in 15 them, what I'm asking is when the scores are done, 16 do they shade one way or the other, and if so, 17 which way and how much? 18 A. The majority of the individuals will fall within 19 the level 3 risk area. I don't know if it's a bell 20 curve precisely or not, the Static 99R's manual 21 providers risk distribution information. So that 22 information can be pulled. 23 Q. My understanding is that the Static-99 was -- the 24 score system in the levels were changed at some 25 point to match -- I used the phrase before, I can't</p> <p style="text-align: center;">Page 64</p>

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<p>1 remember what it was. But it was the same scores</p> <p>2 that's used for other categories of crime to make</p> <p>3 it fit a national standard.</p> <p>4 Were you using a Static-99 before that</p> <p>5 change?</p> <p>6 A. We were.</p> <p>7 Q. And at that time was the distribution within the</p> <p>8 categories different than it is today after the</p> <p>9 change?</p> <p>10 A. That would also require referring to the Static-99R</p> <p>11 2003 evaluator's workbook. I don't --</p> <p>12 Q. Do you remember if -- if it did have a -- a</p> <p>13 different effect or a different distribution?</p> <p>14 A. I do not.</p> <p>15 Q. Okay.</p> <p>16 MS. HEYSE: Paul?</p> <p>17 MR. REINGOLD: Yes.</p> <p>18 MS. HEYSE: Can I ask for a brief</p> <p>19 break?</p> <p>20 MR. REINGOLD: Sure.</p> <p>21 MS. HEYSE: I just need probably less</p> <p>22 than five minutes.</p> <p>23 MR. REINGOLD: Okay. That's great.</p> <p>24 (Off the record at 12:34 p.m.)</p> <p>25 (On the record at 12:39 p.m.)</p> <p style="text-align: center;">Page 65</p>	<p>1 BY MR. REINGOLD:</p> <p>2 Q. What's the reason that the Static-99 is done,</p> <p>3 again, pre-parole? I think you said it but I'm not</p> <p>4 sure I understood it.</p> <p>5 A. The -- The Static is utilized to place individuals</p> <p>6 into relative risk categories or bins, so we can</p> <p>7 understand what their relative likelihood of</p> <p>8 engaging in further sexually motivated behaviors</p> <p>9 are to drive both supervision and treatment</p> <p>10 responses for them.</p> <p>11 Q. All right. And you said because the age is a</p> <p>12 factor, it's at least looking at them all because</p> <p>13 age may have changed the score?</p> <p>14 A. Correct. And we need to be sure that we are</p> <p>15 providing valid and reliable risk and needs</p> <p>16 assessments so that review is necessary to make</p> <p>17 sure.</p> <p>18 Q. Yeah. You said it's the second check as well.</p> <p>19 Yeah. Okay.</p> <p>20 A. Correct.</p> <p>21 Q. I take it it's not used in the parole decision</p> <p>22 itself. Right?</p> <p>23 MS. HEYSE: I'm going to object</p> <p>24 because, again, that's outside of this -- the</p> <p>25 parole stuff we had set a side and we --</p> <p style="text-align: center;">Page 66</p>
<p>1 MR. REINGOLD: Yeah, that's fine. I'll</p> <p>2 withdraw the question.</p> <p>3 BY MR. REINGOLD:</p> <p>4 Q. All right. And you said that the -- that age is</p> <p>5 something that can change over time.</p> <p>6 What about after release; are there</p> <p>7 factors post-release that the Static-99R's</p> <p>8 developers have found to be sufficiently strong</p> <p>9 indicators of change that they can change a</p> <p>10 person's score in addition to changes due to age?</p> <p>11 A. Yes, there are, and there's a -- a matrix that's</p> <p>12 been developed by Dr. Carl Hanson,</p> <p>13 Dr. Andrew Brakley{sp}, Dr. Helmus, and others that</p> <p>14 looks at the amount of time the individual spends</p> <p>15 in the community offense free, and the impact it</p> <p>16 has on their risk level.</p> <p>17 Q. And I assume that with the five risks categories,</p> <p>18 people in the different risk categories will reach</p> <p>19 what Hanson and Helmus and so on, called assistance</p> <p>20 at different times; is that right?</p> <p>21 MS. HEYSE: Can I just ask one question</p> <p>22 for clarification; are you talking about people</p> <p>23 that are still incarcerated or talking about people</p> <p>24 in the community now?</p> <p>25 MR. REINGOLD: We're talking about</p> <p style="text-align: center;">Page 67</p>	<p>1 post-release.</p> <p>2 MS. HEYSE: Okay. I think those</p> <p>3 questions are referring to Corey. I mean, I'd</p> <p>4 refer to you, James, but this is where the lines</p> <p>5 get blurred because we have the individual that</p> <p>6 specializes in incarcerated folks, and the folks</p> <p>7 that are in the community is Corey. So if you can</p> <p>8 answer, James.</p> <p>9 A. Corey can speak to that more precisely.</p> <p>10 Q. It's less about who has less experience out in the</p> <p>11 community and who has more knowledge of how the</p> <p>12 Static-99 works later. And so that should be a</p> <p>13 good determiner. Corey is the one who has the</p> <p>14 better knowledge of the Static-99, I'll wait.</p> <p>15 A. Corey is a SORA-certified Static-99R trainer, I am</p> <p>16 not, so I will defer that question to him if you're</p> <p>17 okay with that.</p> <p>18 Q. Okay. All right. The next question goes to -- The</p> <p>19 next couple of questions go to for how long the</p> <p>20 current regime has existed.</p> <p>21 What I'm trying to figure out is of all</p> <p>22 the people who have come through the Department of</p> <p>23 Corrections, how far back would we have to go</p> <p>24 before we start finding people who haven't gotten a</p> <p>25 VASOR or a Static-99 and would have graduated,</p> <p style="text-align: center;">Page 68</p>

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<p>1 would have been released without the kind of robust 2 assessment and review and programming that has been 3 in place since around 2009, and part of -- that's 4 the preface to the question. And part of the way 5 I'm thinking about it is this.</p> <p>6 In 2009 and the early 2000-teens if you 7 were implementing this more robust and 8 science-driven regime, would people -- was it 9 applied to everybody who was then in prison, or was 10 it only applied to people as they came in; so for 11 example, if you have someone who is near the end of 12 a 25-year sentence in 2014 or 2015, were they, too, 13 getting a COMPAS -- not a COMPAS -- a Static-99 and 14 a -- an SO risk assessment if they needed it, and 15 programming if they needed it before parole, so 16 that looking backwards you can say with some 17 confidence that, you know, most people in prison 18 have been getting this since when?</p> <p>19 A. Most people in prison have received a Static-99R 20 and Stable-2007 that meet criteria for scoring on 21 those tools since 2016 -- sorry, pardon me -- 2015.</p> <p>22 Q. And before that they would have gotten a VASOR, and 23 would they also have gotten an SO risk assessment?</p> <p>24 A. They would have received a VASOR and -- as well as 25 a Static from 2011 as a part of the sex offense</p> <p style="text-align: center;">Page 69</p>	<p>1 risk assessment process.</p> <p>2 Q. All right. So when this came -- came in, what 3 you're telling me is it ramped up pretty quickly 4 and was applied broadly to the whole population?</p> <p>5 A. I guess that depends on the definition of -- of 6 "quickly." It was a very long process 7 involving -- yeah. I wouldn't say quickly, but 8 yes.</p> <p>9 Q. Let me put it a slightly different way. 10 Did it focus on people who were 11 approaching parole so that the idea was you get 12 them assessed and you get them the programming you 13 need if they're on the way out, so the people who 14 were closest to parole in those years would be 15 getting it, which gives you more time to get to 16 everybody else?</p> <p>17 A. The -- The determination about timeframe for use of 18 that Stable is primarily driven by how long the 19 Stable is considered to be valid, which is up to 20 24 months because they didn't change over time, so 21 we wanted to make sure it was still considered 22 valid. So that really drove when we were doing 23 those SORA -- program SORA evaluations. I don't 24 know if that answers your question.</p> <p>25 Q. I think it does. Let me ask it this way.</p> <p style="text-align: center;">Page 70</p>
<p>1 Are you reasonably confident that 2 everybody who has left prison -- I shouldn't say 3 everybody -- the great majority of people serving 4 sex offenses who left prison, you know, after or 5 around 2011, something like that, got the benefit 6 of the kind of work that's being -- that was being 7 implemented then and is sort of routine today?</p> <p>8 A. No, I'm not confident in that.</p> <p>9 Q. What year would it take for you to get to --</p> <p>10 A. 2015 or 2016.</p> <p>11 Q. But everyone before that got it -- got some VASOR 12 with this?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. Between 2011 and 2015, some the Static and the 16 VASOR.</p> <p>17 Q. Yeah. Okay. In the current system that you have, 18 what we'll call the most robust, that has been 19 applied to thousands of people now on long-term and 20 life sentences as well as people serving short 21 sentences?</p> <p>22 A. Thousands of people now, yes, I would say that 23 is -- that's accurate.</p> <p>24 Q. And at least from working at the assessment 25 instruments and the way COMPAS brings all of these</p> <p style="text-align: center;">Page 71</p>	<p>1 things together, you -- you're able to amass 2 like -- I mean, a ton of information in this 3 evaluation process, right, this assessment process?</p> <p>4 MS. HEYSE: I'm going to object to 5 form, but you can answer if you can.</p> <p>6 A. We are able to assess risk-relevant information and 7 put it into our various database systems.</p> <p>8 Q. All right. The other questions that I had, had to 9 do with programming. It looked like from the 10 document we've been reviewing that people can only 11 get into a certain number of programs, and my 12 question as to programming is if someone's been 13 identified as a sexual offender, are they almost 14 for sure going to wind up with MSAPP as their 15 primary default recommendation?</p> <p>16 A. I would not categorize it that way.</p> <p>17 Q. Okay. So how does it work?</p> <p>18 A. Based on an individual's assessment risk and needs, 19 appropriate programing is put in place for them.</p> <p>20 Q. And what I'm trying to figure out is how that 21 process works, you know. If I'm a violent offender 22 I can take violence training, if I'm a drug 23 offender I can take drug training, if I'm a sex 24 offender I can take MSAPP, but it looks like I 25 can't take more than one.</p> <p style="text-align: center;">Page 72</p>

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<p>1 So one question is, is the not taking</p> <p>2 more than one because these things overlap, and if</p> <p>3 you're taking one you're getting benefits of all,</p> <p>4 or is it a limitation on slots?</p> <p>5 MS. HEYSE: So hang on just one second</p> <p>6 before you answer, James. Paul, can you stop</p> <p>7 sharing screen because I -- I'm on one screen right</p> <p>8 now and I can't get to my own documents.</p> <p>9 MR. REINGOLD: Oh, I'm sorry.</p> <p>10 MS. HEYSE: That's okay. I don't think</p> <p>11 you're utilizing this at the moment. I just want</p> <p>12 to double check because, again, I don't recall</p> <p>13 specific programming being on your list of topics,</p> <p>14 but I want to double check to make sure I'm not</p> <p>15 misspeaking.</p> <p>16 MR. REINGOLD: I believe that it did</p> <p>17 include programming, but I don't have it in front</p> <p>18 of me. But I've only got a few questions this is</p> <p>19 not going to be --</p> <p>20 MS. HEYSE: Okay.</p> <p>21 MR. REINGOLD: I'm just trying to</p> <p>22 figure out how people get into MSAPP and if most</p> <p>23 people wind up there. That's really the question.</p> <p>24 MS. HEYSE: Okay.</p> <p>25 MR. REINGOLD: Most people in this</p> <p style="text-align: center;">Page 73</p>	<p>1 category.</p> <p>2 MS. HEYSE: Okay. That's what I was</p> <p>3 going to ask you. We're not speaking solely of</p> <p>4 registrants at the moment, we're speaking</p> <p>5 generally?</p> <p>6 MR. REINGOLD: No, we're speaking of</p> <p>7 people who are sex offenders, which is what I said</p> <p>8 who I would describe at registrants.</p> <p>9 A. Again, it's -- we're very far removed from the</p> <p>10 court process and behavioral health care services</p> <p>11 focused on problematic behavior, so I just want to</p> <p>12 challenge that label of sex offenders or sex</p> <p>13 offense as determinates for treatment</p> <p>14 recommendations; we don't use those.</p> <p>15 Q. We try not to use those as well. That's why I was</p> <p>16 using "registrants."</p> <p>17 Do you have a sense of -- again, as we</p> <p>18 did before -- the approximate percentage of people</p> <p>19 who are on the register industry or committed sex</p> <p>20 offenses who wind up having MSAPP or some other</p> <p>21 form of sexually-related therapy or programming</p> <p>22 before the -- is it, you know, nearly everybody, or</p> <p>23 over 80 percent, something like that?</p> <p>24 A. I can not speak to the aggregate data related to</p> <p>25 how many are scored as a level 1, 2, 3, 4A, or 4B,</p> <p style="text-align: center;">Page 74</p>
<p>1 or speak on how the treatment recommendations</p> <p>2 follow along the risk assessment.</p> <p>3 Q. Okay.</p> <p>4 A. Maybe if an individual who is currently</p> <p>5 incarcerated is assessed as level 1, 2, or 3, that</p> <p>6 sex offense risk assessment is the end of their</p> <p>7 interactions with MSAPP. If they're assessed as</p> <p>8 level 4A, they receive between 6 and 12 months of</p> <p>9 MSAPP treatment -- or 6 to 12 months, and depending</p> <p>10 on the response treatment is when I make the</p> <p>11 determination on when we can complete them</p> <p>12 successfully or not. If they are level 4B they</p> <p>13 receive between 12 and 18 months of MSAPP therapy</p> <p>14 while they're incarcerated.</p> <p>15 Q. All right. So that's exactly what I wanted to</p> <p>16 know. So what you're saying is all levels, 1, 2,</p> <p>17 and 3, are not being -- are not going to be steered</p> <p>18 into sexually related -- almost all aren't going to</p> <p>19 be steered into a sexually-related program, they</p> <p>20 might opt for it or try to get it later on their</p> <p>21 own, but they're not going to be pushed into it?</p> <p>22 A. Not while they're incarcerated. We do not</p> <p>23 recommended prison-based treatment interventions</p> <p>24 for those risk levels while they're incarcerated.</p> <p>25 They will receive a new assessment and treatment</p> <p style="text-align: center;">Page 75</p>	<p>1 when they are in the community.</p> <p>2 Q. Or while on parole?</p> <p>3 A. Correct.</p> <p>4 Q. Yeah. Okay.</p> <p>5 A. That follows along -- That follows along with the</p> <p>6 counsel state government's recommendation for</p> <p>7 treatment intensity and duration.</p> <p>8 Q. Yeah, that's what I was trying to remember, when</p> <p>9 they re-normed the Static-99?</p> <p>10 A. They did not re-norm it, no.</p> <p>11 Q. They changed the risk-level categories?</p> <p>12 A. No, that was a separate group.</p> <p>13 Q. Oh, what was that group?</p> <p>14 A. So the current body is referred to as SORNA that is</p> <p>15 responsible for the Static-99R, Stable-2007. The</p> <p>16 Counsel State Governments was a group of experts</p> <p>17 from around the country including Hanson and</p> <p>18 Robert McGrath, who -- their goal is to be able to</p> <p>19 recommend a common language to describe risk, as</p> <p>20 well as what does the research state is effective</p> <p>21 to reduce likelihood of that behavior. So it's two</p> <p>22 separate entities.</p> <p>23 Q. Okay. Let's see. Do you know if the MDOC does any</p> <p>24 research on the Static-99 or these -- or others of</p> <p>25 these instruments that we've been talking about</p> <p style="text-align: center;">Page 76</p>

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<p>1 measure their effective -- their efficacy just</p> <p>2 within the department?</p> <p>3 A. Can you explain to me what you mean by "efficacy?"</p> <p>4 Q. Whether they're doing what you think they're doing.</p> <p>5 A. So based on actual outcomes are we aware of</p> <p>6 our -- what the validity is of the tools?</p> <p>7 Q. I know they're evaluated from the outside, Hanson's</p> <p>8 people are validated on the Static-99 all the time.</p> <p>9 But I'm just wondering if your folks do it either</p> <p>10 for MSAPP or for, you know, any of these tools</p> <p>11 or programs?</p> <p>12 A. What -- That's commonly referred to as creation of</p> <p>13 localized norms. We do not do that in Michigan.</p> <p>14 Q. Okay. All right. I just have a couple of</p> <p>15 questions left and then we'll wrap up.</p> <p>16 It strikes me as though everything</p> <p>17 you've been talking about hinges on the importance</p> <p>18 of using evidence-based assessment, and whenever</p> <p>19 possible evidence-based programming, and then it's</p> <p>20 enhanced by carefully controlled things like the</p> <p>21 Stable, or the way you're exercising judgement is</p> <p>22 cabined so that it's as objective as it can be, and</p> <p>23 then you also add onto that some direct clinical</p> <p>24 evaluation that maybe, you know, shapes things a</p> <p>25 little bit on the edges. And that's part of what I</p> <p style="text-align: center;">Page 77</p>	<p>1 described this as, an incredibly robust analysis.</p> <p>2 Do you think that doing all this</p> <p>3 prepares offenders -- sexual offenders -- or I</p> <p>4 should say registrants -- for success on reentry?</p> <p>5 MS. HEYSE: I'm going to object on a</p> <p>6 lot of grounds. Form and foundation, but I also</p> <p>7 think, you know, are you asking him in a</p> <p>8 representative capacity, Paul, because if so,</p> <p>9 again, I don't know that that's a question that</p> <p>10 James Kissinger can answer on behalf of MDOC.</p> <p>11 Q. I'll just -- Can you answer that or not?</p> <p>12 A. Can I answer on behalf of MDOC, do we believe the</p> <p>13 robust assessment treatment program works?</p> <p>14 Q. Yes.</p> <p>15 A. I do not believe I am in a position to answer that</p> <p>16 question.</p> <p>17 Q. Okay. I -- Part of what I'm trying to get at here</p> <p>18 is, it seems like the whole focus of what the MDOC</p> <p>19 is doing is based on science, and then when</p> <p>20 registrants get out, one of the things that they're</p> <p>21 facing is the SORA.</p> <p>22 To your knowledge, is the SORA itself</p> <p>23 evidence based?</p> <p>24 MS. HEYSE: I'm going to instruct him</p> <p>25 not to answer. That is not one of the topics or</p> <p style="text-align: center;">Page 78</p>
<p>1 questions that you asked, and again, I don't know</p> <p>2 that MDOC is prepared -- I'm not prepared for him</p> <p>3 to represent MDOC in response to that question,</p> <p>4 Paul.</p> <p>5 MR. REINGOLD: All right. Then James,</p> <p>6 I want to thank you for your time and the wealth of</p> <p>7 information that you conveyed. We're done, and the</p> <p>8 next dep will be a lot shorter.</p> <p>9 THE WITNESS: My pleasure, thank you</p> <p>10 both.</p> <p>11 MR. CLARK: I'm sorry, Paul.</p> <p>12 Keith Clark, assistant to the attorney general on</p> <p>13 behalf of the Michigan State Police and the</p> <p>14 governor's office in the Doe's Lawsuit. I would</p> <p>15 like to ask two very brief follow-up questions, or</p> <p>16 a short series of follow-up questions, based upon</p> <p>17 your questions for Mr. Kissinger on behalf of the</p> <p>18 Michigan State Police and the governor's office in</p> <p>19 the lawsuit.</p> <p>20 MR. REINGOLD: The floor is yours.</p> <p>21 MR. CLARK: Thank you.</p> <p>22 EXAMINATION</p> <p>23 BY MR. CLARK:</p> <p>24 Q. So how are you today?</p> <p>25 A. I'm well, thank you.</p> <p style="text-align: center;">Page 79</p>	<p>1 Q. So I have some very limited questions. I want to</p> <p>2 clarify something that I think that you said</p> <p>3 earlier. I think there was another answer, I want</p> <p>4 to clarify this.</p> <p>5 If a juvenile offender only commits a</p> <p>6 sexually deviant offense as a juvenile, then come</p> <p>7 to the Department of Corrections and stays there, I</p> <p>8 don't know, for 30 years, is it ever appropriate to</p> <p>9 use a Static-99 if there's no further sexual</p> <p>10 deviant behavior?</p> <p>11 A. Do you mind defining what you mean by "deviant?"</p> <p>12 Q. Oh, I'm sorry. I'll ask you the question in a</p> <p>13 better way.</p> <p>14 Can you use the Static-99 if the only</p> <p>15 thing a juvenile offender does is the original</p> <p>16 offense that gets him into trouble?</p> <p>17 A. So if a juvenile engages in sexually motivated</p> <p>18 criminal behavior as a juvenile, can we use the</p> <p>19 Static when they are now an adult?</p> <p>20 Q. Yes.</p> <p>21 A. No, we cannot.</p> <p>22 Q. Okay. Unless they commit some new sexually</p> <p>23 motivated behavior?</p> <p>24 A. As an adult, correct.</p> <p>25 Q. As an adult. Okay. Thank you.</p> <p style="text-align: center;">Page 80</p>

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<p>1 And the tool that you use for</p> <p>2 juveniles, is that a risk assessment tool, or is</p> <p>3 that a treatment assessment tool, or a need for</p> <p>4 treatment assessment, the SORNA?</p> <p>5 A. The professor is not a risk assessment tool.</p> <p>6 Q. Thank you.</p> <p>7 A. It is a treatment guide tool.</p> <p>8 Q. Okay. Thank you. So it doesn't assess a risk, it</p> <p>9 just determines whether or not someone would</p> <p>10 benefit from treatment?</p> <p>11 A. Correct. No, it is used in treatment with -- For</p> <p>12 individuals engaging in sexually motivated</p> <p>13 behaviors as a juvenile, the recidivism rate would</p> <p>14 not suggest that treatment interventions would</p> <p>15 reduce their likelihood in engaging in further</p> <p>16 sexually motivated behaviors in general.</p> <p>17 The professor it meant to build upon</p> <p>18 already protective factors for those that are</p> <p>19 placed into treatment. It's a treatment guide.</p> <p>20 Q. Thank you. That was very informative. And my last</p> <p>21 question involves risk assessment tools for female</p> <p>22 offenders.</p> <p>23 Does the department use any risk</p> <p>24 assessment tools for female offenders?</p> <p>25 A. We do not.</p> <p style="text-align: center;">Page 81</p>	<p>1 Q. Does the Counsel of Governments, if you're aware,</p> <p>2 recommend any assessment tools for female</p> <p>3 offenders -- risk assessment tools?</p> <p>4 A. They do not. They do not.</p> <p>5 Q. Okay. Does a person's identification -- gender</p> <p>6 identification play a part in which risk assessment</p> <p>7 tool is used or whether or not you use a risk</p> <p>8 assessment tool?</p> <p>9 A. That's a relatively complicated question, I'll</p> <p>10 state to the best of my abilities. The Static-99R</p> <p>11 has clear scoring requirements based on</p> <p>12 individual's biological parts at time of offending.</p> <p>13 Q. Okay. That answers my question and ends my series</p> <p>14 of questions. Thank you very much for your</p> <p>15 answers.</p> <p>16 A. My pleasure.</p> <p>17 MR. REINGOLD: I have one follow up</p> <p>18 question about -- I meant to ask you about women</p> <p>19 and forgot.</p> <p>20 RE-EXAMINATION</p> <p>21 BY MR. REINGOLD:</p> <p>22 Q. Is the reason that women don't get assessed because</p> <p>23 this are no instruments that are normed for women,</p> <p>24 or is it also because their risk level is so low</p> <p>25 that there's no point in doing it?</p> <p style="text-align: center;">Page 82</p>
<p>1 A. I attended a training by Dr. Kritana{sp} of</p> <p>2 Montreal who is known as the expert on women who</p> <p>3 engage in sexually abusive behaviors. At present</p> <p>4 time, there is not enough of recidivistic behaviors</p> <p>5 that women have engaged in that were sexually</p> <p>6 motivated to be able to norm a tool for women who</p> <p>7 engaged in sexually abusive behaviors.</p> <p>8 So it's something that potentially can</p> <p>9 happen down the road, but at present time there are</p> <p>10 no validated risk assessment tools for women who</p> <p>11 engage in sexually abusive behaviors.</p> <p>12 Q. It sounds like what you're saying is you need</p> <p>13 enough crime to be able to get statistically valid</p> <p>14 norms, and there aren't enough women criminals; you</p> <p>15 need more women criminals to do that?</p> <p>16 MS. HEYSE: I'm going to object to</p> <p>17 form. You can answer if you can, James.</p> <p>18 A. I kind of like the way -- the way he said that and</p> <p>19 also hated the way he said that. I think that's a</p> <p>20 fair characterization that there's not a large</p> <p>21 enough pool to treat a norm sample out of.</p> <p>22 MR. REINGOLD: All right. I'll leave</p> <p>23 it there and again, thank you for your time and</p> <p>24 effort. I appreciate it.</p> <p>25 THE WITNESS: My pleasure.</p> <p style="text-align: center;">Page 83</p>	<p>1</p> <p>2 (The Examination was concluded at</p> <p>3 1:07 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 84</p>

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1 CERTIFICATE
2 STATE OF MICHIGAN)
3)
4 COUNTY OF MACOMB)
5 I, Gina Deskiewicz, a Notary Public
6 in and for the above county and state, do hereby certify
7 that this deposition was taken before me at the time and
8 place hereinbefore set forth; that the witness was by me
9 first duly sworn to testify to the truth; that this is a
10 true, full and correct transcript of my stenographic
11 notes so taken; and that I am not related, nor of
12 counsel to either party, nor interested in the event of
13 this cause.
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21 Gina Deskiewicz, CSR-9689, RPR.
22 Notary Public
23 Macomb County, Michigan
24 My commission expires June 14, 2027
25

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